

United States District Court  
Northern District Of Georgia  
Newnan Division

United States Of America )  
 )  
Plaintiff, )  
 ) Criminal Action  
vs. ) File No. 3:21-CR-004-TCB  
 )  
 ) Atlanta, Georgia  
Robert Purbeck, ) September 1, 2022  
 ) 10:20 a.m.  
Defendant. )  
\_\_\_\_\_ )

Day 1 of 2 / Volume 1 of 2

Transcript Evidentiary Hearing  
Before The Honorable Russell G. Vineyard  
United States Magistrate Judge

APPEARANCES:

FOR THE GOVERNMENT: Michael Herskowitz  
Alex Sistla  
Brian Mund  
Assistant U.S. Attorneys

FOR THE DEFENDANT: Andrew Hall  
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Proceedings recorded by mechanical stenography, transcript  
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1           THE COURT: This is the case of United States  
2 versus Robert Purbeck. Case No. 3:21-CR-4. We are here for  
3 an evidentiary hearing on the motions to suppress  
4 statements, password disclosures, and matters arising  
5 therefrom, Document Number 25. We have Mr. Herskowitz  
6 Mr. Sistla on behalf of the United States. Mr. Hall is here  
7 on behalf of the defendant.

8           MR. HERSKOWITZ: Good morning.

9           MR. HALL: Good morning, Your Honor.

10          MR. HERSKOWITZ: May I introduce a trial attorney  
11 from Washington in our computer crime and intellectual  
12 property section, Brian Lund, and Special Agent Roderick  
13 Coffin as well.

14          THE COURT: Good morning.

15          MR. HALL: On my part, Your Honor, good morning.

16          THE COURT: Yes, sir.

17          MR. HALL: If I can introduce, please, Mr. Robert  
18 Purbeck is present here, and then also this is my paralegal,  
19 Ms. Allison Hornbuckle. Ms. Hornbuckle will be in and out  
20 assisting me throughout the day. I wanted to let you know  
21 who was sitting at counsel table with me.

22          THE COURT: Thank you, Mr. Hall. I appreciate  
23 that.

24          MR. HALL: Yes, sir.

25          THE COURT: And we have other folks in the

1 courtroom as well. Is the rule going to be invoked?

2 MR. HALL: Yes. We invoke the rule. Both parties  
3 will. We do have, by agreement, however, have agreed to  
4 allow a witness, Dr. John Allen, who will be testifying in  
5 an expert witness capacity, to remain in the courtroom to  
6 listen to the testimony. And I can certainly answer  
7 questions about that, but the gist of it is, because we  
8 believe there is going to be some factual disputes going on,  
9 he is not going to testify to the facts, but rather, based  
10 on the facts, that depending on what Your Honor decides, how  
11 that medically may affect things. So we discussed that  
12 among the parties and agreed that he could be present for  
13 the duration.

14 MR. HERSKOWITZ: That is right, Your Honor.

15 THE COURT: Okay. All right. Very good. Any  
16 other preliminary matters?

17 MR. HERSKOWITZ: No, Your Honor.

18 MR. HALL: I think I have one that I probably  
19 should put on the record. I will be real quick, and then we  
20 will move on. So Your Honor has already ruled against me, I  
21 think it was done where we went by email, it was my choice  
22 because I went about it more informally. But just to  
23 formalize it, my understanding Your Honor's ruling today's  
24 hearing is for docket entry number 25. Not quibbling with  
25 the Court. I had asked from our perspective just to state

1     formally, Your Honor, that we believe that an evidentiary  
2     hearing was appropriate under *Franks* I infer Your Honor has  
3     decided otherwise from that. I am not going to dwell on  
4     that. But even separate from that, we thought it was  
5     important to have an evidentiary hearing about three  
6     distinct matters. Again, I totally recognize Your Honor has  
7     already said no to this, and the government does oppose it,  
8     and I have already alerted the Court to the opposition, but  
9     one is whether the search warrant with attachments was  
10    present during the search of Mr. Purbeck home, we think that  
11    is a relevant fact that is open to evidentiary development.  
12    What was the basis for receiving large numbers of items from  
13    Mr. Purbeck's home that were not within the scope of the  
14    search warrant, which is relevant to Mr. Purbeck's position  
15    that the government treated this warrant as though it was a  
16    general warrant. And three, what instructions or directions  
17    were provided to the searching agents and what did the  
18    searching agents understand the search warrant authorized  
19    them to search for and seize, which is also relevant to  
20    Mr. Purbeck's position that the government treated the  
21    search warrant as a general warrant.

22           I presented those matters to Your Honor via a  
23    letter from counsel back in April-ish, alerted you to the  
24    government's opposition. Your Honor has responded to that a  
25    long time ago and said no, we are going to do it with this.

1 I'm not renewing it or reiterating, I just feel like I went  
2 the informal route and, as counsel, I should formalize that  
3 statement.

4 THE COURT: Yes, sir.

5 MR. HALL: Period.

6 THE COURT: Thank you, Mr. Hall.

7 MR. HALL: Yes, Judge.

8 THE COURT: Any response, Mr. Herzkowitz?

9 MR. HERSKOWITZ: No, Your Honor.

10 THE COURT: Are you ready to proceed?

11 MR. HERSKOWITZ: Yes, Your Honor.

12 THE COURT: Call your first witness.

13 MR. HERSKOWITZ: We call the first witness,  
14 Special Agent Roderick Coffin.

15 Sp. Agt. Roderick Coffin

16 Sworn

17 THE CLERK: Please state and spell your name for  
18 the record.

19 THE WITNESS: Special Agent Roderick Coffin.  
20 R-o-d-e-r-i-c-k C-o-f-f-i-n.

21 Direct Examination

22 BY MR. HERSKOWITZ:

23 Q. Good morning. Where are you employed?

24 A. I am employed with the FBI in Atlanta, Georgia.

25 Q. How long have you been employed with the FBI?

1 A. A little over 12 years.

2 Q. Are you an FBI Special Agent?

3 A. I am.

4 Q. What positions have you held within the FBI or where  
5 have you been assigned since joining the FBI?

6 A. I've been primarily assigned to the FBI Atlanta office.  
7 I had a six-months temporary duty assignment to Rome, Italy.

8 Q. What are your current duties and responsibilities as an  
9 FBI Special Agent?

10 A. I am a -- primarily I investigate computer intrusions,  
11 both criminal and national security computer intrusions. I  
12 have a few ancillary duties. I am one of our leaders on the  
13 evidence response team, among other things.

14 Q. Are you the co-case agent in the investigation of Robert  
15 Purbeck together with Special Agent James Pinette?

16 A. I am.

17 Q. And generally what type of investigation is it?

18 A. It's an investigation into a hacking group that is  
19 committing computer intrusions and extortions.

20 Q. Where did Mr. Purbeck reside in August of 2019?

21 A. He resided in Meridian, Idaho.

22 Q. Do you have the address of that residence?

23 A. 451 West Waterbury Drive.

24 Q. And was he the owner of that residence?

25 A. He was.

1 Q. And what type of neighborhood is this? Were there  
2 numerous houses on the street, or is this kind of a  
3 residence that is by itself? Can you describe that for the  
4 Court?

5 A. It's a suburban neighborhood with many houses all in  
6 kind of a gray pattern.

7 Q. Did you obtain a federal search warrant to search  
8 Mr. Purbeck's residence in Meridian, Idaho?

9 A. Yes, I did.

10 Q. Where did you obtain that search warrant from?

11 A. From the United States District Court of Idaho.

12 Q. When did you obtain it?

13 A. I believe it was August 19, 2019.

14 Q. I want to take you to the day of the search, August 21,  
15 2019, were you working on that date?

16 A. I was.

17 Q. What was your assignment?

18 A. I was there. I had traveled to Boise to participate in  
19 the search of Mr. Purbeck's residence and to attempt an  
20 interview of Mr. Purbeck.

21 Q. Why did you want to talk to Mr. Purbeck?

22 A. We were investigating, not just the hacker that we felt  
23 he was, but other hackers that we thought he might have  
24 information about, and we wanted to try to get his  
25 assistance in that investigation.

1 Q. Did you have an arrest warrant for Mr. Purbeck?

2 A. I did not.

3 Q. Were there any charges pending against Mr. Purbeck on  
4 that date?

5 A. No, there were not.

6 Q. Was there a plan to take him into custody on that date?

7 A. There was not.

8 Q. Why not?

9 A. We felt we wanted to execute the search warrant first to  
10 attempt the interview, to collect digital evidence, and to  
11 analyze that digital evidence and the result of the  
12 interview, and to allow that information to inform our  
13 charging decisions should we choose to go that route.

14 Q. Focus on the morning of August 21, 2019. What time did  
15 you arrive in the vicinity of Mr. Purbeck's residence?

16 A. It was sometime before 8 o'clock, not too much before,  
17 maybe between 7:30 and 8 o'clock.

18 Q. In the morning?

19 A. In the morning. Yes, sir.

20 Q. How did you arrive?

21 A. In a vehicle with a supervisory agent, Douglas Hart.

22 Q. How many other agents or staff were there to assist in  
23 the execution of the search warrant that morning?

24 A. I believe there were 14 total FBI agents -- I am sorry,  
25 FBI employees, nine of whom were agents.

1 Q. Who were the other five?

2 A. So we had of course myself, Special Agent Pinette,  
3 Supervisory Agent Douglas Hart, we had agent Clark  
4 Harshbarger.

5 Q. Generally the other five?

6 A. Generally they were mostly agents from the Boise office.  
7 There was myself and Agent Pinette were the only two from  
8 Atlanta, and we had one agent from the Washington office.

9 Q. How were you dressed?

10 A. I mean, it was three years ago. I honestly don't  
11 remember what I was wearing or how I was dressed.

12 Q. Did you have a firearm with you?

13 A. I did have a firearm.

14 Q. Do you recall if the firearm was visible?

15 A. I don't believe it was visible because when we wrote our  
16 report in the days after the search, we documented that no  
17 firearms were visible on the approach to Mr. Purbeck.

18 Q. Do you recall how other agents were dressed?

19 A. No, not beyond the way I memorialized that in the 302.

20 Q. Do you recall how many vehicles there were?

21 A. There were two or more vehicles parked on the street  
22 outside his house.

23 Q. Were there any marked police vehicles?

24 A. Not that I recall seeing.

25 MR. HERSKOWITZ: Judge, we've conferred -- counsel

1 has conferred prior to the hearing, and to expedite matters  
2 we have agreed that Government's Exhibits 1 through 6 are  
3 admissible into evidence. Exhibits 1 through 4 are  
4 photographs. 5 is a certified weather report that was  
5 provided by the defense, and Exhibit 6 is a consent to  
6 assume online identity authorization form. And I am going  
7 to use these exhibits with the witness and just expedite  
8 things, which we have conferred, and likewise I will give  
9 the defense the same courtesy on some matters. And we would  
10 ask to introduce at this time Government's Exhibits 1, 2, 3,  
11 4, 5, and 6.

12 THE COURT: Those are admitted without objection  
13 by consent?

14 MR. HALL: No objection.

15 THE COURT: They are admitted.

16 MR. HERSKOWITZ: And I ask to publish them as  
17 well.

18 THE COURT: Yes, sir.

19 BY MR. HERSKOWITZ:

20 Q. I am showing you Government's Exhibit 1, which has been  
21 admitted. What is Government's Exhibit 1?

22 A. That is a picture of the front of Mr. Purbeck's  
23 residence.

24 Q. What are you observing in Government's Exhibit 1?

25 A. There are two vehicles parked in the driveway, and a

1     tiny house along the left-hand side of the residence.

2     Q.   Where was the vehicle you were in that morning in  
3     relation to the main residence depicted in Government's  
4     Exhibit 1?

5     A.   The vehicle I was in was off the left side of this  
6     photograph, which would have been the east side of the house  
7     on the road.

8     Q.   Did you eventually encounter Mr. Purbeck that morning?

9     A.   Yes, I did.

10    Q.   And where was he encountered?

11    A.   Mr. Purbeck walked out the front of his house, which  
12    would be toward, on the right-hand side of this photo kind  
13    of by that planter and he walked from his house to his car  
14    which would be the gray Mustang parked in the driveway.

15    Q.   And tell us about the encounter with Mr. Purbeck.

16    A.   As Mr. Purbeck approached his car, myself and the other  
17    agents approached him. I was not the first agent to  
18    Mr. Purbeck. There was another agent who arrived there  
19    first. When I approached Mr. Purbeck, I recall one of the  
20    other agents doing a brief pat down where he felt around  
21    Mr. Purbeck waistband presumably for safety purposes. And  
22    then after that myself and Special Agent Pinette engaged  
23    Mr. Purbeck in conversation while the other agents proceeded  
24    to clear the house to make sure it was safe for the search.

25    Q.   I want to break that down just a little bit. How many

1 agents approached Mr. Purbeck?

2 A. I'm not sure the total number and how many arrived at  
3 what time.

4 Q. What did you observe? How many agents talked to  
5 Mr. Purbeck?

6 A. I observed one agent focusing on Mr. Purbeck.

7 Q. What were the other agents doing?

8 A. I can't recall. I was myself also focused on  
9 Mr. Purbeck.

10 Q. How long, after the one agent first encountered  
11 Mr. Purbeck and did the pat down, did you arrive to speak  
12 with Mr. Purbeck?

13 A. I don't believe it was very long. I think it was a  
14 matter of probably a few seconds.

15 Q. And what time in the morning was this?

16 A. It would have been a little bit before 8 o'clock.

17 Q. 8:00 a.m.?

18 A. 8:00 a.m. Yes.

19 Q. Describe your initial interaction with Mr. Purbeck.

20 A. So myself and Agent Pinette informed Mr. Purbeck that we  
21 had a search warrant to search his residence that day. We  
22 informed him that he was not under arrest. And we asked if  
23 we could speak with him, you know, later that morning. We  
24 had questions and we thought he could be of assistance in  
25 our investigation.

1 Q. When you first saw Mr. Purbeck, was he restrained in any  
2 way?

3 A. He was not.

4 Q. Was he restrained at all in the driveway?

5 A. He was not.

6 Q. Were there any handcuffs put on him?

7 A. There were not.

8 Q. Were there any guns pointed at him?

9 A. There were not.

10 Q. Was he standing, sitting, laying on the ground?

11 A. I believe he was standing beside the vehicle.

12 Q. Did he have anything in his hands?

13 A. I don't recall whether it was in his hand or not, but he  
14 did have a cup of coffee when he left the house. I don't  
15 recall if he put it on top of the car, where it was at that  
16 moment.

17 Q. Did anyone scream or raise their voice at Mr. Purbeck in  
18 the driveway?

19 A. No one did.

20 Q. What was Mr. Purbeck's demeanor?

21 A. I thought Mr. Purbeck was very calm. In that moment and  
22 later in the day he was always respectful to me. And he  
23 seemed calm and, you know, understanding.

24 Q. What was your demeanor? We are speaking of the  
25 interaction in the driveway.

1 A. I feel like my demeanor was pretty much as it is now,  
2 where I was speaking respectfully and calmly to Mr. Purbeck.  
3 There was never a reason to treat him otherwise that day.

4 Q. How about Agent Pinette?

5 A. Likewise.

6 Q. Aside from the pat down, did you see anybody put their  
7 hands on Mr. Purbeck?

8 A. I did not.

9 Q. Did you put your hands on Mr. Purbeck at all?

10 A. I did not.

11 Q. Did you see Agent Pinette put his hands on Mr. Purbeck?

12 A. I did not.

13 Q. Did you deliberately try to take a respectful tone with  
14 Mr. Purbeck, as you described it?

15 A. It did, and it was deliberate. When I attempt  
16 interviews, I've found that rapport-based interviews are the  
17 most effective. So I wanted to use those first moments in  
18 my encounter with Mr. Purbeck to establish, you know, a  
19 positive relationship where we could have a constructive  
20 dialogue.

21 Q. I believe you testified before that you told Mr. Purbeck  
22 he was not under arrest; is that correct?

23 A. That is correct.

24 Q. Did you advise Mr. Purbeck that he could leave?

25 A. I don't recall doing so.

1 Q. Did you advise him that he could not leave?

2 A. No.

3 Q. Did Mr. Purbeck ask any questions in the driveway?

4 A. I remember him asking something along the lines of, in  
5 response to me asking to interview him, I believe he kind of  
6 wondered or asked about him getting to work on time.

7 Although I don't remember how he asked it, I remember  
8 telling him something like Ada County knows to not expect  
9 you to be on time today.

10 Q. Where did Mr. Purbeck work?

11 A. He worked at Ada County which is the county that  
12 includes Boise, Idaho in information technology at the  
13 courthouse.

14 Q. Did Mr. Purbeck ask to leave?

15 A. He did not.

16 Q. And what was his response to you wanting to speak with  
17 Mr. Purbeck?

18 A. I don't recall him giving us a verbal response, but I  
19 know he, you know, continued to agree to interview with us  
20 and that indeed did happen.

21 Q. Did you conduct the interview on the driveway?

22 A. No, sir.

23 Q. Did you decide to conduct the interview somewhere else?

24 A. Yes. We decided to conduct the interview in the  
25 backyard of the house.

1 Q. How did you get to the backyard?

2 A. So we walked up, "we" being myself, Agent Pinette, and  
3 Mr. Purbeck, and entered the house through the front door.  
4 And then the main space of the house was largely one open  
5 area. We walked through the living room, kind of passed the  
6 kitchen-slash-dining room, and out the rear doors and into  
7 the backyard.

8 Q. Where were the other agents at that time?

9 A. I don't recall exactly where people were. I don't  
10 specifically remember where everything else was at.

11 Q. Was there anyone else besides you and Agent Pinette  
12 that walked with Mr. Purbeck from the driveway to the  
13 backyard?

14 A. I believe it was just us two who walked with him. I  
15 don't believe there were any other agents.

16 Q. How long were you in the driveway before you walked  
17 through the house to the backyard?

18 A. I don't believe it was very long. I mean, it's been a  
19 few years since then, but my recollection was that it was  
20 fairly brief, probably less than fifteen minutes. I can't  
21 imagine there is any way it was more than thirty.

22 Q. When walking from the driveway through the house to the  
23 backyard, did anyone put hands on Mr. Purbeck?

24 A. No, they did not.

25 Q. Did anyone yell at him?

1 A. They did not.

2 Q. Did anyone threaten him?

3 A. They did not.

4 Q. Did anyone promise him anything?

5 A. They did not.

6 Q. Did he seem to object to going to the backyard to speak  
7 with you?

8 A. He did not.

9 Q. I'm showing you Exhibit 2. Would this picture be  
10 helpful in describing the route you took to the backyard?

11 A. Yes. This is the picture of the living room kind of  
12 looking past the kitchen to the rear door. So we would have  
13 walked through the room that is in the front of this  
14 picture, kind of up along the middle of the picture and out  
15 the doors at kind of the middle top portion of the exhibit.

16 Q. Did he ask for anything, Mr. Purbeck, on the way to the  
17 backyard?

18 A. He asked to refill his coffee cup.

19 Q. What was the response from --

20 A. I don't remember exactly how we put it, but yeah, we  
21 definitely allowed him to fill his coffee.

22 Q. Can you describe the condition of Mr. Purbeck's home,  
23 walking through it?

24 A. As is kind of demonstrated in this exhibit, the house  
25 was very cluttered. There weren't a lot of spots that were

1 open or that would have been conducive for conducting an  
2 interview. And the house had a rather foul odor.

3 Q. What time did you arrive in the backyard?

4 A. I believe we were at the backyard at approximately 8  
5 o'clock in the morning.

6 Q. What was the weather at that time, Agent Coffin?

7 A. So the sun was up, the weather was cool certainly at  
8 that point in time. I recall that it was at least a partly  
9 sunny day, and that the sun striking at least some of the  
10 backyard at that point.

11 Q. Is there anything else you can describe for the Court  
12 about the backyard area?

13 A. The backyard, it is a fenced-in backyard with a grass  
14 lawn. There was a small storage shed. The lawn extended  
15 around the left-hand side of the house as you were facing  
16 the house. There were kind of two paths around that large  
17 wooden structure which we found was a tiny home, and there  
18 was a gate facing the street on the left-hand side of the  
19 backyard.

20 Q. Could one get out of the backyard to the front of the  
21 house, the front of the residence, without going through the  
22 house?

23 A. Yes. They could have gone through the gate on the  
24 left-hand side of the house.

25 Q. Were there any chairs in the backyard?

1 A. There were.

2 Q. Where were the chairs?

3 A. I don't recall where they were when we initially entered  
4 in the backyard.

5 Q. And then how did you begin the set up or the  
6 conversation with Mr. Purbeck?

7 A. Well, we did want to -- it would be more comfortable to  
8 sit, so we did find several white plastic lawn chairs that,  
9 you know, we set out in the backyard so myself, Agent  
10 Pinette and Mr. Purbeck could talk.

11 Q. Was there any thought to where the chairs were placed --

12 A. No.

13 Q. -- and who would sit in what chair?

14 A. No.

15 Q. Did anyone face Mr. Purbeck facing the sun?

16 A. No.

17 Q. How close were you to Mr. Purbeck?

18 A. I don't think we were, you know, terribly far apart. I  
19 don't feel we were in each other's personal space, and we  
20 were close enough to easily hear each other, so it was  
21 probably two to five feet apart.

22 Q. I am showing you Exhibit 3. Is Government's Exhibit 3  
23 helpful in describing where you were, where Agent Pinette  
24 was, and where Mr. Purbeck seated in the backyard?

25 A. Yes, I believe it is. In kind of the -- I don't know,

1 the left third kind of center of the photo you see what  
2 appears to be the glass doors with curtains on either side,  
3 and I believe that is probably Special Agent Pinette that  
4 you see sitting kind of facing away from the photograph.

5 Q. Were any of the chairs intentionally positioned so they  
6 would be in the sunlight?

7 A. They were not.

8 Q. Did Mr. Purbeck, when you started the interview, express  
9 any concerns about the sun or the weather?

10 A. He did not.

11 Q. Did he ask to speak with you somewhere else?

12 A. He did not.

13 Q. Did he ask to leave?

14 A. He did not.

15 Q. Did you read Mr. Purbeck his Miranda rights?

16 A. We did not.

17 Q. Why not?

18 A. We did not feel he was in custody.

19 Q. What if he had asked to leave?

20 A. He would have been allowed to leave.

21 Q. And did he agree to speak to you in the backyard?

22 A. He did.

23 Q. Describe Mr. Purbeck's demeanor and your demeanor and  
24 Agent Pinette's demeanor as the interview commenced?

25 A. I mean, as I stated earlier, I felt that Mr. Purbeck was

1 calm, he was respectful to myself and Agent Pinette  
2 throughout the interview. He was articulate and smart.

3 Q. Was the interview audio or video recorded in any way?

4 A. It was not.

5 Q. Did you or Agent Pinette have a tape or video recorder  
6 with you?

7 A. We did not.

8 Q. Why did you choose not to record the interview?

9 A. Well first of all, it wasn't required by FBI policy.  
10 And second of all, we thought we might have a more effective  
11 rapport-based interview if we just spoke with him without  
12 the recording device between us.

13 Q. Did you document the interview?

14 A. We did.

15 Q. How was it documented?

16 A. Both myself and Special Agent Pinette took  
17 contemporaneous notes with the interview. And then a few  
18 days after the interview was concluded and we returned to  
19 Atlanta, we formally documented that in an FD-302 report of  
20 investigative activity.

21 Q. Do you recall how many pages that report was?

22 A. I believe it was nine.

23 Q. Would you have written a nine-page report if the  
24 interview had been recorded?

25 A. I would not have.

1 Q. Why not?

2 A. The recording would have just spoken for itself. We  
3 would have download it to a disc and stored it in evidence,  
4 and our 302 would have include a preamble that stated it was  
5 a recorded interview and it would have referred to the  
6 recording for the substance, and then we could have  
7 optionally summarized some of the pertinent facts in the  
8 body of the 302 if we chose to.

9 Q. Did you give Mr. Purbeck any orders to either sit or  
10 stand up, or any orders whatsoever, while you were in the  
11 backyard?

12 A. We did not.

13 Q. Were there any other agents in the backyard besides you  
14 and Agent Pinette?

15 A. I don't recall any agents, at least throughout the bulk  
16 of the interview. I just remember the two of us.

17 Q. Did Mr. Purbeck ask for any food or water?

18 A. Not that I recall.

19 Q. If he had asked for food or water, would have you  
20 provided that to him?

21 A. Certainly.

22 Q. And when in the backyard, did you conduct any other  
23 search or pat down of Mr. Purbeck?

24 A. I did not.

25 Q. Did you or Agent Pinette lay any hands on Mr. Purbeck?

1 A. We did not.

2 Q. And did anyone raise their voices with him?

3 A. No.

4 Q. Did Mr. Purbeck mention any medical conditions?

5 A. He did not.

6 Q. Did he appear sick or ill at any time while in the  
7 backyard speaking with him?

8 A. No.

9 Q. Did he appear to be in pain at any time?

10 A. No.

11 Q. Did he appear to be sunburned at any time?

12 A. No.

13 Q. Did he appear to be in any discomfort at all?

14 A. Not at all.

15 Q. Did Mr. Purbeck appear to be under the influence of  
16 drugs or alcohol?

17 A. No.

18 Q. Did he appear nervous at all?

19 A. No. No. He was surprisingly calm.

20 Q. And did he appear willing to speak with you?

21 A. Yes.

22 Q. Tell us how the interview began.

23 A. So myself and Special Agent Pinette began with  
24 background questions. In the early part of the interview, I  
25 believe it was Special Agent Pinette who was asking most of

1 the questions. So in the early questioning it was  
2 Mr. Purbeck responded to us about his educational background  
3 that he had a Bachelor's of Science from the University of  
4 Phoenix, that he completed the majority of his studies to  
5 get a Master's of Science from the American Public  
6 University. Our background questioning covered his  
7 employment, and he informed us that he worked for Ada County  
8 in information technology and worked in the courthouse, and  
9 had previously worked for the State of Idaho.

10 Q. Did he appear intelligent?

11 A. He did.

12 Q. Did he appear educated?

13 A. He did.

14 Q. Did Mr. Purbeck ask you any questions at this early part  
15 of the interview?

16 A. I believe early in the interview he asked you how he  
17 could be of assistance and mentioned that a security  
18 researcher had reached out to him, and the researcher felt  
19 that he was a member of a hacking organization that he  
20 didn't want to be identified with. And myself and Special  
21 Agent Pinette informed him that we did want to talk about  
22 how he could be of assistance, but we wanted to finish some  
23 background questions first.

24 Q. Did anyone yell at Mr. Purbeck?

25 A. They did not.

1 Q. Did you ever observe an agent come outside and scream at  
2 him?

3 A. No.

4 Q. Did you observe an agent come outside and put their hand  
5 on their gun?

6 A. No.

7 Q. During the entire time that you spoke to Mr. Purbeck,  
8 did either you, Agent Pinette or any other agent ever raise  
9 their voice or yell at Mr. Purbeck?

10 A. We did not.

11 Q. Did anyone ever promise him anything?

12 A. No.

13 Q. Did Mr. Purbeck ever ask to go inside?

14 A. Not that I recall.

15 Q. If he had asked to go inside, would you permit him to go  
16 inside by himself?

17 A. No.

18 Q. Explain to the Court why not.

19 A. So we would have facilitated whatever request was  
20 causing him to want to go inside, but for two primary  
21 reasons we wouldn't let him walk around the search scene by  
22 himself, and the first would be safety. As we saw on the  
23 first exhibit, it was a rather cluttered house, it hadn't  
24 been searched yet by agents. We wouldn't want anybody,  
25 including the defendant, to walk around and potentially grab

1 a weapon, startle an agent, and do anything that would  
2 create a safety issue for our personnel or for him. And the  
3 other would be evidentiary. We are searching that same  
4 scene for evidence. We need to be able to attest to the  
5 validity of the evidence that we collect, so we need to have  
6 control of the scene. We wouldn't want him to try to grab  
7 evidence, move evidence, or otherwise interfere with our  
8 evidentiary search.

9 Q. I am showing you Government's Exhibit 4. Does that --  
10 can you describe that exhibit for the Court?

11 A. That is a picture from the inside of Mr. Purbeck's  
12 residence.

13 Q. Does that picture inform at all your decision-making  
14 about allowing Mr. Purbeck to walk around the house by  
15 himself during the search?

16 A. Yes. I mean, the house obviously had a significant  
17 amount of clutter, it hadn't been searched at that point in  
18 time. We don't know what evidence or weapons or other types  
19 of things might be stored in that -- in all of those  
20 possessions.

21 Q. Once the house was searched, would there be a reason  
22 again not to let Mr. Purbeck walk around the house by  
23 himself?

24 A. Yes. I think still the concern about officer safety  
25 could still exist.

1 Q. As the interview progressed, did you and Agent Pinette  
2 and Mr. Purbeck in the same spots in your chairs?

3 A. No. Myself, Agent Pinette, and Mr. Purbeck to move our  
4 chairs as the lighting in the backyard changed. As the sun  
5 rose, different areas were shaded, different areas became  
6 sunny, and we moved our chairs to kind of follow the shade  
7 as the morning progressed.

8 Q. Were you all in the shade or the sun? Do you recall?

9 A. The shade most of the time.

10 Q. And did you instruct Mr. Purbeck or Agent Pinette  
11 Mr. Purbeck where to put his chair?

12 A. No.

13 Q. Did Mr. Purbeck move his own chair?

14 A. He did. For awhile.

15 Q. And then what happened?

16 A. And then at some point I recall Mr. Purbeck stopped  
17 moving his chair to stay in the shade with myself and Agent  
18 Pinette.

19 Q. Did the temperature change throughout the interview?

20 A. Yes. As the morning progressed it got increasingly  
21 warmer.

22 Q. Was Mr. Purbeck sweating at all?

23 A. Not that I recall.

24 Q. Would you describe him as drenched in sweat at any part  
25 of the interview?

1 A. Absolutely not.

2 Q. Did you review, Agent Coffin, some certified weather  
3 data provided by defense counsel?

4 A. I did.

5 MR. HERSKOWITZ: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. HERSKOWITZ:

8 Q. I just showed you Government's Exhibit 5. Do you recall  
9 that document?

10 A. I do.

11 Q. What is that document?

12 A. This is certified climate data. I believe it is from  
13 the Boise Air Terminal. I seen it on the top left.

14 Q. And in that document is there data showing the  
15 temperature and dew point on August 21, 2019 at the Boise  
16 Air Terminal? And that is in Idaho?

17 A. Yes, there is. And yes, that's in Idaho.

18 Q. What page are you looking at, Agent Coffin?

19 A. On the third page. Local climatological data. Hourly  
20 observations. Yes, that's the one.

21 Q. Can you describe for the Court the temperature starting  
22 at 7:53 in the morning and going to 11:53 in the morning,  
23 just that range?

24 A. According to this report, at 7:53 in the morning the dry  
25 bulb temperature was 75 degrees, the dew point was 42, and

1 the relative humidity was 31.

2 Q. Okay.

3 A. And then at 8:53, the dry bulb temperature was 78  
4 degrees, the dew point was 44, and the relative humidity was  
5 30. At 9:53 the dry bulb temperature was 80 degrees, the  
6 dew point was 44, and the relative humidity was 28. At  
7 10:53 the dry bulb temperature was 84, the dew point was 44,  
8 and the relative humidity was 25. At 11 o'clock the dry  
9 bulb temperature was 84, the dew point was 44, the relative  
10 humidity was 25. And at 11:53 the dry bulb temperature was  
11 89, the dew point was 44, and the relative humidity was 21.

12 Q. Are you familiar with the terms dry bulb temperature,  
13 dew point, and relative humidity?

14 A. Dry bulb is a new -- dry bulb is a new term for me, but  
15 I am familiar with dew point and relative humidity.

16 Q. Would you, based upon your experience, tell us what that  
17 is?

18 A. Yeah. My experience would be -- I mean, obviously I  
19 think the temperature is relatively straightforward, and  
20 relative humidity would be a measure of how much moisture is  
21 in the air. And I believe dew point, my familiarity with  
22 dew point is it tends to be a good indicator of how  
23 comfortable it is outside. When I spend time outside I look  
24 often at the relative humidity. I know if the relatively  
25 humidity is over 70 it is extremely uncomfortable, that is

1     what we experience here in Georgia, and if that relative  
2     humidity is in the 60's and below it's going to get more and  
3     more comfortable. Again --

4     Q. And again, what was the relative humidity here?

5     A. The relative humidity at 7:53 -- I'm sorry, the relative  
6     humidity or dew point?

7     Q. Both.

8     A. The relative humidity went from 31, and then at 11:53 it  
9     dropped to 21. The dew point went from 44 and rose to --  
10    I'm sorry -- 42 and rose to 44.

11    Q. So what does that tell you about the humidity on that  
12    day?

13    A. That it would be a relatively comfortable day if you can  
14    get outside of the sun particularly. In Georgia it can feel  
15    hot even if you are in the shade. If you can get out of the  
16    sun in this dew point, it would have felt comfortable.

17    Q. What about in the sun?

18    A. It could be warm. Yes.

19    Q. And I believe you testified before that you were in the  
20    backyard to start the interview at approximately 8 o'clock  
21    a.m.?

22    A. Yes. That is correct.

23    Q. At what point did Mr. Purbeck make inculpatory  
24    statements in connection with the hacking activity? Do you  
25    recall the time that he did that?

1 A. Yes. At the point that we kind of reached that critical  
2 portion of the interview, my recollection was that it wasn't  
3 significantly long. I don't think there is anyway it could  
4 have been more than an hour-and-a-half into the interview  
5 that we reached that critical phase of the interview.

6 Q. So would that be before 9:53 or around that time?

7 A. I believe it was before 9:53. Yes, sir.

8 Q. Were you sweating in the backyard?

9 A. I don't recall sweating. No.

10 Q. Were you uncomfortable?

11 A. No.

12 Q. Did you any body armor on?

13 A. I did have body armor, at least at the beginning. I  
14 don't recall if I left it on the whole time.

15 Q. Do you know if it was inside your shirt or outside your  
16 shirt?

17 A. I don't remember, unfortunately, at this point.

18 Q. Did Mr. Purbeck ask for an attorney at any point in the  
19 interview?

20 A. He did not.

21 Q. Did the subject of an attorney ever come up?

22 A. It did.

23 Q. How did it come up?

24 A. At one point in our interview when we were challenging  
25 his recollection of nicknames that we believed he controlled

1 and that he had omitted to mention to us, he said that he  
2 was nervous and asked if he should have an attorney.

3 Q. What was your response to that question?

4 A. Myself and Agent Pinette told him that we could not give  
5 him legal advice. He was entitled to an attorney and he did  
6 not have to talk to us.

7 Q. How did he respond to that?

8 A. He still wondered -- he asked the question how much time  
9 was he looking at. And we told him that we couldn't make --  
10 we couldn't make any determination of whether he would have  
11 been charged or if he was charged what potential sentence he  
12 would be looking at.

13 Q. Did he ever ask for an attorney during the interview?

14 A. He did not.

15 Q. Did he ask to call an attorney?

16 A. He did not.

17 Q. Did he ask to use your phone to call an attorney?

18 A. He did not.

19 Q. Did he mention an attorney again that day?

20 A. No.

21 Q. After this exchange that you just testified to, did  
22 Mr. Purbeck keep talking?

23 A. He did.

24 Q. Did he appear, well, to talk?

25 A. He did.

1 Q. Did his demeanor change at all?

2 A. No.

3 Q. Briefly, what did Mr. Purbeck say after that?

4 A. He took a breath and said, okay, you know about the  
5 hacking. I am lifelock. And lifelock is the identity of  
6 one of the hackers that we were investigating.

7 Q. Did you ask Mr. Purbeck for any passwords to any  
8 computers?

9 A. Yes, I did.

10 Q. How was that request made?

11 A. So after kind of that critical portion we began to  
12 explore other questions. We asked about victims. The  
13 conversation turned to the computers that were inside of the  
14 house. He identified for us what was the computer he used  
15 in these hacks. He told us about that computer, an external  
16 hard drive that was attached to it. He informed us that  
17 those devices were encrypted with a type of technology  
18 called VeraCrypt. And he consented and we documented that  
19 in a consent to assume online identity form. He consented  
20 to give us the password to decrypt those devices.

21 Q. Let me show you Exhibit 6. What is Exhibit 6?

22 A. That is an FBI consent to assume online identity form.

23 Q. And what is the purpose of that form?

24 A. This form can be used for different purposes. It is  
25 primarily used when somebody agrees to allow us to take over

1 and control their online accounts, but included in this is  
2 really both search authority as well as authority to operate  
3 those accounts, because once an account is made available to  
4 the FBI by definition, we are going to have access to the  
5 information stored in it. So it is both online -- both live  
6 access as well as a search.

7 Q. Who wrote where it says account names, who wrote those  
8 accounts?

9 A. That is my handwriting.

10 Q. And Mr. Purbeck signed the form?

11 A. He did.

12 Q. Where did he sign the form?

13 A. Can you raise it a little bit in the ELMO? His  
14 signature is on the left side of the form above my name and,  
15 you know, in the lines above where I signed.

16 Q. You said you signed as well?

17 A. I signed as well.

18 Q. Did Special Agent Pinette sign?

19 A. Yes, he did.

20 Q. And in the form, does it say anything about giving  
21 consent at the beginning of the form?

22 A. It does. Would you like me to read the relevant  
23 portion?

24 Q. Yes.

25 A. I give this consent freely and voluntarily without fear,

1 threats, coercion, or promises of any kind. I have been  
2 advised of my rights to refuse to allow the FBI to assume my  
3 online identity, and I hereby voluntarily waive this right.

4 Q. Did anyone threaten Mr. Purbeck in signing this form?

5 A. They did not.

6 Q. Did anyone promise him anything to sign the form?

7 A. No.

8 Q. Just let me finish -- to sign the form?

9 A. No.

10 Q. And did he appear willing to sign it?

11 A. Yes, he did.

12 Q. Did he ask any questions about it?

13 A. No.

14 Q. What time did you conclude the interview with  
15 Mr. Purbeck?

16 A. Like I said, I felt we reached the critical portion  
17 within about an hour and a half. As we continued the  
18 interview and got to the point where we talked about the  
19 devices and the passwords, I recall myself splitting my time  
20 between being outside and then going inside to look at the  
21 evidence, and to verify that the passwords we were given  
22 were indeed correct. So in terms of the ending time, I  
23 really don't recall there being a hard end. There was kind  
24 of a -- the interview was front-load with most of the  
25 questions where we covered most of the information, and

1       there was a point in time which I started spending more time  
2       in the house. Mr. Purbeck was in the backyard for the  
3       duration of the search, but the interview did not take up  
4       all that time.

5       Q. Do you recall what time the consent to assume online  
6       identity form was signed, Government's Exhibit 6?

7       A. I mean, it would probably have been 30 minutes to one  
8       hour after kind of we reached the critical phase of the  
9       interview, so that would have been 10:00 to 10:30.

10      Q. In the morning?

11      A. In the morning. 10:30 to 11:00 maybe.

12      Q. Who was with Mr. Purbeck when you got up to go in the  
13      house?

14      A. Most of the time I recall Special Agent Pinette was  
15      still with him.

16      Q. Were there any other agents out there with him during  
17      that time?

18      A. Not during that time.

19      Q. Did Mr. Purbeck stay in the backyard?

20      A. He did.

21      Q. Why not leave him alone outside?

22      A. Once again, I think that would have been an officer  
23      safety issue.

24      Q. How so?

25      A. The search warrant covered the whole house, including

1 the backyard. Obviously the storage house probably had  
2 tools and other things that could be improvised as a weapon.

3 Q. Did he ask to get up and walk around in the backyard?

4 A. He did not.

5 Q. Would you have allowed him to do so if he wanted to?

6 A. Yes.

7 Q. I believe you testified before as to the gate or the  
8 exit from the backyard to the front yard. Were any agents  
9 blocking that exit?

10 A. No.

11 Q. So did Mr. Purbeck attempt to leave?

12 A. No.

13 Q. What if he asked to leave?

14 A. We would have allowed it.

15 Q. Did any other authorities arrive to speak to  
16 Mr. Purbeck?

17 A. At some point in the day a detective and an IT  
18 supervisor from Ada County arrived.

19 Q. Do you recall what time they arrived?

20 A. I don't recall.

21 Q. Were you part of that interview?

22 A. I was not.

23 Q. About what time was the search warrant concluded?

24 A. Around 2:00 p.m.

25 Q. And did you have any interaction with Mr. Purbeck around

1       that time?

2       A.   I don't think so.

3       Q.   Did you provide anything to Mr. Purbeck?  A business  
4       card, or any documents?

5       A.   I believe at some point I gave him probably my business  
6       card, definitely my phone number, because I received a call  
7       from him the next day.

8       Q.   Tell us about that interaction where you provided the  
9       business card.  How did Mr. Purbeck appear at that time?

10      A.   I don't recall specifically giving him the business  
11      card, but I know that I must have given him something with  
12      my information on it because I got a call from him the next  
13      day.

14      Q.   Did you see Mr. Purbeck when agents were ready to leave?

15      A.   I don't have a recollection of that.

16      Q.   Okay.  Did Mr. Purbeck at any time during the day appear  
17      to be suffering from heat stroke?

18      A.   No.

19      Q.   He did he appear drenched in sweat?

20      A.   No.

21      Q.   Did he appear to be in pain?

22      A.   No.

23      Q.   Did he appear to be any discomfort whatsoever?

24      A.   No.

25      Q.   Did he complain about anything?

1 A. No.

2 Q. Did he ask for any medication?

3 A. No.

4 Q. If he had asked for medication would you have given him  
5 some?

6 A. We would have.

7 Q. At any point during the day were any AUSAs, assistant  
8 attorneys, or prosecutors inside or around Mr. Purbeck's  
9 residence?

10 A. No.

11 Q. Did any AUSAs travel out to Boise with you?

12 A. Yes.

13 Q. Who?

14 A. Only you.

15 Q. And did I travel out with you to Mr. Purbeck's  
16 residence?

17 A. You did not.

18 Q. Did AUSA Nathan Kitchens travel out to Boise with us?

19 A. No.

20 Q. Was Mr. Purbeck restrained that day?

21 A. No.

22 Q. Were handcuffs ever put on him that day at any point?

23 A. No.

24 Q. Did he every tell you he wanted to end the interview?

25 A. No.

1 Q. Did anyone promise Mr. Purbeck anything to get him to  
2 talk to you?

3 A. No.

4 Q. Did anyone ever lay a hand on Mr. Purbeck or touch him  
5 that day to your knowledge besides the pat down that you  
6 described?

7 A. The only encounter I recall is the pat down.

8 Q. Did anyone threaten him at all that day?

9 A. No.

10 Q. Did anyone try to trick Mr. Purbeck?

11 A. No.

12 Q. Did he ever appear dehydrated?

13 A. No.

14 Q. Did he ever appear sick?

15 A. No.

16 Q. Did he ever slur his speech?

17 A. No.

18 Q. Did he ever ask for a hat or sunscreen?

19 A. No.

20 Q. Were there any moments of levity that day with  
21 Mr. Purbeck?

22 A. There were. There was a time when we were exploring  
23 some of his online nicknames, and we asked him if he used  
24 the nickname studmaster and studmaster1 on Alphabay, and he  
25 said he did. He described that as a nickname that his

1 friends had given him because he said he wasn't good with  
2 girls. And I recall that all three of us, myself, Agent  
3 Pinette, and Mr. Purbeck had a chuckle about that one.

4 Q. Did Mr. Purbeck contact you after that day of the  
5 search?

6 A. He did. I believe he called me and left me a voice mail  
7 the next day.

8 Q. Do you recall what that voice mail said?

9 A. I don't recall, but I do remember getting a phone call  
10 from him the day after that.

11 Q. Tell us about that phone call.

12 A. In that phone call I remember I was at the grocery  
13 store. I took the phone call from Mr. Purbeck and he  
14 explained to me that he had additional information that he  
15 wanted to share. He said that he was willing to meet with  
16 the government to talk about this additional information.  
17 You know, I asked if he would be willing to participate in a  
18 proffer session. He said he would. And I contacted the  
19 AUSAs, including yourself, in this case, to arrange a target  
20 letter to be issued for Mr. Purbeck so that he could get  
21 representation and join us for a proffer session in Atlanta,  
22 Georgia.

23 Q. Did he eventually come to Atlanta for a proffer meeting?

24 A. He did.

25 Q. Where was that held?

1 A. It was held at the FBI office in Atlanta.

2 Q. When was that?

3 A. I believe the date was September 9, 2019.

4 Q. And what was he demeanor during that proffer meeting?

5 A. His demeanor was the same as it was in the interview.

6 It was calm, respectful, and he was still articulate and  
7 smart.

8 MR. HERSKOWITZ: That's all I have.

9 THE COURT: Mr. Hall, you may cross-examine.

10 Cross-Examination

11 BY MR. HALL:

12 Q. Good morning. We met briefly, I guess we've talked on  
13 the phone before, but we met briefly this morning. I am  
14 Drew Hall, Mr. Purbeck's attorney.

15 A. Good morning.

16 Q. Let me ask you, at the very beginning of the August 21,  
17 2019 approach to Mr. Purbeck's house out in Boise, Idaho --  
18 if I get this wrong -- I understand what you testified to,  
19 you said that you and another agent or at least one other  
20 agent, approached Mr. Purbeck. You were not the agent first  
21 making contact with Mr. Purbeck, but you were there within  
22 seconds. Did I get that right?

23 A. That is correct. Yes.

24 Q. And if I also heard correctly, you said that -- I wasn't  
25 clear which agent, but an agent performed a pat-down of

1 Mr. Purbeck.

2 A. Yes.

3 Q. Now, was there anything at that point of day that caused  
4 you to believe that Mr. Purbeck was armed?

5 A. No.

6 Q. Did you do the pat-down, or someone else?

7 A. I did not. I don't recall the identity at the time, but  
8 I remember in my capacity as one of the co-case agents.

9 Q. What is the answer to that question?

10 A. I believe it was Agent Ryan O'Neil.

11 Q. And so you and Agent O'Neil approached and Agent O'Neil  
12 is the one who patted down Mr. Purbeck to your recollection?

13 A. My recollection.

14 Q. Fair enough. But I understand you are a little fuzzy --  
15 not fuzzy, but not 100 percent that it was agent O'Neil but  
16 you are 100 percent that Mr. Purbeck was patted down for  
17 weapons; correct?

18 A. Yes.

19 Q. And you would agree with me, even though I think we all  
20 know the language patting down, I will state it for the  
21 record, that requires you to put hands on the person's body;  
22 correct?

23 A. Correct.

24 Q. All right. And in some form or fashion Agent O'Neil or  
25 whomever from the FBI would have grabbed ahold of

1 Mr. Purbeck and put his hands on him to check for weapons;  
2 correct?

3 A. I don't know that I would use the word grab. But pat  
4 down around the waistband.

5 Q. Is it your testimony that whoever patted down just kind  
6 of stood back and reached out, or did they reach up there  
7 and put their hands on him and either frisk him or otherwise  
8 kind of keep hold of him and see whether he was armed or  
9 not?

10 A. The only interaction I recall, patting down of the waist  
11 band.

12 Q. How long have you been in law enforcement?

13 A. Twelve years.

14 Q. How long with FBI?

15 A. Twelve years.

16 Q. Is it fair to say you've frisked people before?

17 A. Yes.

18 Q. Checked them for weapons for officer safety, or whatever  
19 reason? Correct?

20 A. Sorry to interrupt you. Yes.

21 Q. No, if I misspeak you can correct me. Is that true?

22 A. Yes.

23 Q. And in your experience, when someone gets patted down,  
24 it involves law enforcement putting their hands on that  
25 individual to control them, as well as to pat them down;

1 correct? Because if they have a weapon, you don't want  
2 something wacky to happen?

3 A. I don't know that it would be both control and searching  
4 for a weapon because I don't think you can use two hands to  
5 pat someone down and hold them at the same time.

6 Q. Were you right there with Mr. Purbeck when Agent O'Neil  
7 was patting him down?

8 A. I believe it was within eyesight. I don't remember  
9 exactly how close I was.

10 Q. When you first approached Mr. Purbeck, he was leaning  
11 into his car, was he not?

12 A. I don't recall.

13 Q. All right. Am I right that he was startled to see the  
14 FBI there?

15 A. I don't know how he felt.

16 Q. Fair enough. That is more than fair. From your  
17 observation, did he appear to be surprised to be interacting  
18 with law enforcement at 7:30-something in the morning?

19 A. Honestly, no. He was surprisingly calm.

20 Q. Did you ask or hear anyone else ask was it okay to pat  
21 Mr. Purbeck down?

22 A. I don't recall hearing that.

23 Q. I also thought I heard you say, or maybe I misheard,  
24 that days later when you went back and wrote up the FBI 302  
25 regarding this search, you documented that no law

1 enforcement were displaying weapons upon approach to the  
2 house. Did I hear that right? Or did I mishear you?

3 A. I think what we documented is no weapons were visible on  
4 the approach to Purbeck, not specifically addressing the  
5 house.

6 Q. Okay. When you say no weapons were visible on the  
7 approach to Purbeck, are you testifying that that reference  
8 is to Mr. Purbeck that no weapons were visible? Or that no  
9 law enforcement had weapons out?

10 A. That no law enforcement officers had weapons out.

11 Q. All right. I will show you what I have marked for  
12 identification as Defendant's Exhibit 17. Can you take a  
13 look at that?

14 A. Yes. I see this.

15 Q. And that -- why don't you tell me what you recognize  
16 that to be?

17 A. This is the FD-302 investigative report that myself and  
18 James Pinette wrote after the interview of Mr. Purbeck.

19 Q. If I am right, and I will direct your attention now to  
20 about six lines down. Let me back up. So if I have this  
21 correct, what you documented was, first of all, Mr.  
22 Purbeck's name; correct?

23 A. Correct.

24 Q. The first sentence. And that he was interviewed at his  
25 residence -- it doesn't say the date of the interview, but

1 he was interviewed at his residence during the execution of  
2 a search warrant; correct?

3 A. Correct.

4 Q. And then you started and you start talking about prior  
5 to the initiation of the interview, Purbeck was approached  
6 outside of his residence as he was leaving for work and he  
7 was advised the FBI had a search warrant to search his  
8 residence including any buildings and vehicles on the  
9 property. That is the next sentence after you've identified  
10 your topic sentence of the report; correct?

11 A. Correct.

12 Q. Then the sentence that you and I were talking about just  
13 a moment ago was, the next sentence says, interviewing  
14 agents observed no weapons visible during this approach.  
15 Did I get that right?

16 A. Correct.

17 Q. And if I understand your testimony, you are saying that  
18 that reference is to FBI and law enforcement not having  
19 weapons visible, not that no weapons are visible on your  
20 approach to Mr. Purbeck, Mr. Purbeck having weapons?

21 A. That is correct. That reference was to none of our  
22 weapons were visible during the approach.

23 Q. Why wouldn't you just say that?

24 A. I don't know why we didn't say it any particular way. I  
25 think it speaks for itself.

1 Q. I guess here is what I am getting at, you are talking  
2 about Mr. Purbeck, you are doing an interview with him. You  
3 are talking about prior to the initiation interview you are  
4 approaching him outside his residence; right? Then your  
5 next sentence is no -- interviewing agents observed no  
6 weapons visible during this approach. I mean, that is  
7 literally what it says; correct?

8 A. Correct.

9 Q. And the part I am trying to make sure I understand is, a  
10 reader, me, would think that means you are referring to Mr.  
11 Purbeck. But you are testifying that has something to do  
12 with -- it has nothing to do with Mr. Purbeck and whether he  
13 should be patted down, or how the approach was when you came  
14 up to him, which is what we are talking about, but said that  
15 this has to do with whether other agents had their weapons  
16 drawn.

17 A. Yes. That's -- when we wrote this sentence, and I maybe  
18 didn't recall at the time it could have been interpreted  
19 ambiguously, but when we wrote this sentence we intended it  
20 to document the kind of things such as our visibility of  
21 weapons. And there are other instances in here where we  
22 talk about the context that could be useful in evaluating  
23 the interview. So we put that in here because we thought it  
24 was helpful to memorialize.

25 Q. Did you do that based on just your recollection?

1 A. When we wrote this it was based on my recollection and  
2 the recollection of Agent Pinette, and we wrote it within  
3 days of conducting the search.

4 Q. So the investigation, in these events described,  
5 happened on August 21; correct?

6 A. That is correct.

7 Q. If I am correct, you drafted this report on August 27,  
8 six days later; correct?

9 A. That is correct. Six calendar days. It would have been  
10 under the five business days that we had per FBI policy to  
11 write the investigative report.

12 Q. I am not quibbling about your policy, I am just making  
13 sure I am doing my math right. So it's six days later when  
14 this -- six plus one -- yeah. Six days later that you sat  
15 down and wrote this.

16 A. Correct.

17 Q. All right. Let me show you something different here.  
18 Let me show you what is marked for identification as  
19 Defendant's Exhibit 18. Do you recognize this?

20 A. That is my handwritten notes from the morning of August  
21 21.

22 Q. All right. Hang on to those. We'll be back to those in  
23 a moment. I wanted to make sure that I have the right  
24 person. So actually -- let me ask you. The notes, am I  
25 right that those reflect notes you took after you had sat

1 down with Mr. Purbeck in the backyard and don't reflect  
2 anything prior to that time?

3 A. That is correct.

4 Q. Okay. And so the initial conversation about approaching  
5 the house and your interaction with Mr. Purbeck, that is  
6 just done from memory?

7 A. It is done from my memory at the time I wrote the  
8 report.

9 Q. Along with Agent Pinette's memory?

10 A. Yes.

11 Q. Okay.

12 MR. HALL: Judge, I have a series of photographs.  
13 Again, I consulted with the government counsel and we are  
14 just going to introduce them all at once to kind of help  
15 move the process along. It's going to be Defendant's  
16 Exhibits 1 through 16. I am going to show them to the  
17 agent, and we will kind of move them into evidence.

18 BY MR. HALL:

19 Q. I am going to show you what I have marked for  
20 identification as Defendant's Exhibits 1 through 16 and ask  
21 you to just rifle through those real quick.

22 Have you had a chance to look at them?

23 A. Yes, sir.

24 Q. So, with respect to Defendant's Exhibits 1 through 16,  
25 do you recognize those as FBI photographs taken on August

1 21, the day of the search?

2 A. Yes.

3 Q. And I will represent to you, and I already discussed  
4 with defense counsel, this is the digital version of those  
5 same photographs that I have saved on a thumb drive.

6 MR. HALL: This is Defendant's Exhibit 19, your  
7 Honor. So I will move into evidence Defendant's Exhibits 1  
8 through 16, and Defendant's Exhibit 19 which is the digital  
9 version of Defendant's Exhibit 1 through 16.

10 MR. HERSKOWITZ: No objection, Your Honor.

11 THE COURT: They are admitted.

12 MR. HALL: Unfortunately, my laptop won't connect  
13 to the Court's system, at least if it does not in the way  
14 that I am familiar with, so what I am planning to do is to  
15 go the old-school way which is to show the witness the  
16 digital versions of the exhibits to talk through. If we  
17 need to display anything on the ELMO, and Your Honor wants  
18 to look at it, I am happy to do it as we go along.

19 THE COURT: Do you want to just put them on the  
20 ELMO?

21 MR. HALL: I want to talk about the date and time.  
22 I brought an HDMI cable, but that is not the way to go, so  
23 that is an oversight by me.

24 THE COURT: You may proceed.

25 BY MR. HALL:

1 Q. So, Agent Coffin, you see, this is Defendant's Exhibit  
2 19 I am showing you. Do you see in there a series of jpeg  
3 files label Ex 1 through Ex 16?

4 A. I do.

5 Q. And what I am going to do is open these up and make sure  
6 they correspond, if you don't mind checking that we have a  
7 good record here, so I am going to just flip through them.  
8 And if you go along, you let me know.

9 A. They seem to match, to me, to correlate.

10 Q. We are going to take Defendant's Exhibit 1 first, and if  
11 I come over here and right click on properties --

12 MR. HERSKOWITZ: Your Honor, may I relocate to be  
13 able to see?

14 THE COURT: Yes.

15 MR. HALL: Please, Mr. Herskowitz, please.

16 BY MR. HALL:

17 Q. So you have seen that I opened the properties in exhibit  
18 1; correct, Agent Coffin?

19 A. Correct.

20 Q. If I go here to details, do you see where it says date  
21 taken?

22 A. I do.

23 Q. All right. What does it say there?

24 A. It says August 21, 2019, 7:53 a.m.

25 Q. All right. So let's switch to our ELMO. So are you

1 familiar with what this photograph is?

2 A. This is the cover sheet for the search photography.

3 Q. All right. And tell the judge, or actually let me ask  
4 you, am I right that what happens when the FBI conducts a  
5 search warrant, specifically when the FBI conducted a search  
6 warrant in this case, at this residence, the FBI had a  
7 photographer who, throughout the course of the search, took  
8 a series of photographs; correct?

9 A. That is correct.

10 Q. And this photograph, the cover sheet, is the first  
11 photograph that was taken from that series; correct?

12 A. Correct.

13 Q. Hence the cover sheet.

14 A. Yes.

15 Q. Right. So is it safe to say then that as of 7:53 a.m.,  
16 the FBI photographer was on scene and beginning to take  
17 photographs at Mr. Purbeck's residence?

18 A. I think that that is safe to say with one caveat, which  
19 would be the time sticker that you were showing me that are  
20 coming from the file would have been times that the camera  
21 was set to. And since I was not the photographer, I do not  
22 know whether the photographer insured that the time was  
23 exactly correct when she started taking photos.

24 Q. So your caveat -- so let me make sure I understand.

25 Your caveat is that the FBI photographer, the camera -- and

1 the photographer is Ms. Nicole Hideman; correct?

2 A. Correct.

3 Q. So your concern is that maybe the time stamps on the FBI  
4 camera might not be accurate?

5 A. I just can't testify to that because I never had  
6 possession of the camera that day.

7 Q. Okay. Absent that caveat, any other problems with  
8 thinking that is the first photograph that was taken?

9 A. No.

10 Q. In fact, thinking back to your testimony, where you  
11 testified that she got there somewhere in the 7:30, 8  
12 o'clock range. This doesn't seem like a crazy time;  
13 correct?

14 A. Correct. It doesn't seem to be extremely off.

15 Q. In fact, is it safe to say it doesn't seem to be off at  
16 all, given that your testimony was that you showed up  
17 between sometime between 7:30 and 8:00 a.m.?

18 A. I would say it seems to be at least roughly accurate.

19 Q. Okay. Now, at the time that the FBI photographer  
20 started taking photographs, correct me if I am wrong, but  
21 the FBI would have already gone in and searched the  
22 situation such as Mr. Purbeck's, and specifically, not  
23 generically, but what happened at Mr. Purbeck's house is the  
24 FBI goes in there and, quote unquote, clears the house;  
25 correct?

1 A. Yes.

2 Q. Looking for any kind of problems that would pose a  
3 danger to the agents; correct?

4 A. That is correct.

5 Q. Before any actual searching starts, you, per se you, but  
6 you and your colleagues, the FBI, will go in there and take  
7 control of any persons who are in there; correct?

8 A. The agents would ensure that the house was safe of any  
9 threats.

10 Q. And that includes within it taking control of any  
11 persons who are inside the home; right?

12 A. I am not sure that it would have been -- that I would  
13 use the word taking control, but just making sure they  
14 didn't present a threat.

15 Q. In some way making contact with them and insuring that  
16 they weren't going to cause any harm to officer safety, as  
17 you testified to, or to the evidentiary value of whatever  
18 search maybe be taking place?

19 A. That is correct.

20 Q. So certainly in that sense, to the extent they are in  
21 the house, the FBI at that point has -- they are not able to  
22 just wander freely around the house, right? The FBI has  
23 some level of control over him or her; is that correct?

24 A. That is correct.

25 Q. The same with Mr. Purbeck, he was outside. And you

1 testified earlier he couldn't just wander in the house on  
2 his own for reasons you gave. So at some level the FBI has  
3 control of his comings and goings; correct?

4 A. Correct.

5 Q. Now, let's go to our next photograph. So this is  
6 exhibit 2, the same or similar to one of the ones that you  
7 testified to with the government; correct?

8 A. That is correct.

9 Q. And if we go to properties, and we go to details, what  
10 does the date and time there say?

11 A. August 21, 2019, 7:55 a.m.

12 Q. Okay. To the extent there is any question about whether  
13 the cover sheet that was taken was taken at or near the  
14 house, we know certainly the FBI photographer was on scene  
15 at 7:55 a.m., subject to your caveat about you haven't  
16 personally checked the camera; right?

17 A. Correct. Roughly that would have probably been when  
18 exhibit 2 was taken.

19 Q. And then let's flip you over here to Defendant's Exhibit  
20 5 and Defendant's Exhibit 6. And I will jump back on you  
21 real quick to make sure, this is Defendant's Exhibit 2 that  
22 we were just talking about with the 7:55 a.m. time; correct?

23 A. Correct.

24 Q. And I am going to put up Defendant's Exhibit 5. Does  
25 that look right?

1 A. Yes.

2 Q. All right. If we were to go over here to Defendant's  
3 Exhibit 5, that's Defendant's Exhibit 5; right?

4 A. Correct. It is.

5 Q. If we go to the properties, we go to details, what is  
6 the date and time then?

7 A. August 21, 2019 at 7:59 a.m.

8 Q. All right. And for Defendant's Exhibit 6, did I put  
9 that up correctly?

10 A. Yes, sir.

11 Q. All right. And again, to confirm for you, opening up  
12 Defendant's Exhibit 6 on the Defendant's Exhibit 19; is that  
13 right?

14 A. It is.

15 Q. All right. And we go back to properties. And right  
16 there, what is the date and time?

17 A. August 21, 2019, 8:01 a.m.

18 Q. So let's pause there for a second. So if I remember and  
19 understood your testimony correctly on direct, you believe  
20 that you had started the interview with Mr. Purbeck by 8:00  
21 a.m. Correct?

22 A. Yes.

23 Q. And in fact, I understand we have this caveat you have  
24 raised about Ms. Hideman's camera, but looking at  
25 Defendant's Exhibit 5 at 7:59 a.m., and Defendant's Exhibit

1 6 at 8:01 a.m., and then thinking back to your testimony on  
2 direct, you would agree with me, would you not, that  
3 certainly by 8:00 a.m. it appears that Agent Pinette was  
4 sitting outside of Mr. Purbeck's house in the backyard;  
5 correct?

6 A. Correct.

7 Q. And that seems to be corroborated by the photographic  
8 evidence that the FBI produced to me in this case; correct?

9 A. Correct.

10 Q. And although we can't see in Defendant's Exhibit 6  
11 because of the way of the curtains, you believe the back of  
12 that person's head is Agent Pinette?

13 A. I think so. Yeah.

14 Q. And if I understood your direct testimony, at that time  
15 you would have still been with Agent Pinette, you would have  
16 been outside interviewing Mr. Purbeck; correct?

17 A. I think so.

18 Q. Is that what you testified to on direct?

19 A. Yes.

20 Q. I know we can't see you here because there is a curtain,  
21 we can't see Mr. Purbeck either, correct?

22 A. Correct.

23 Q. But based on your direct testimony and based on looking  
24 at these photographs, it looks like around right around 7:51  
25 and to 8 o'clock a.m. you had moved already moved the

1 chairs, sat down, and started talking to Mr. Purbeck;  
2 correct?

3 A. I can't tell that we are talking here but, yeah, the  
4 first two. We certainly found chairs and sat down.

5 Q. But what you are able to testify to at this point is  
6 that between 7:59 a.m. on August 21 and 8:01 on August 21,  
7 you, Agent Pinette, and Mr. Purbeck had gone from the  
8 outside when you first encountered him, through the house,  
9 into the back, got the chairs, moved them to where you moved  
10 them, sat down, and you are just not clear whether you  
11 actually had started physically speaking or not, but you  
12 were certainly seated preparing to speak; correct?

13 A. Yes.

14 Q. You could have just been sitting there looking at each  
15 other I guess; right?

16 A. Perhaps.

17 Q. But you told us on direct you had a pretty good rapport  
18 talking to Mr. Purbeck throughout the time; correct?

19 A. I was attempting to establish rapport. Correct.

20 Q. All right. So then as I understand it, and you don't  
21 know exactly, but you were outside of Mr. Purbeck -- you can  
22 correct me if I misremember what you said on direct --  
23 somewhere between 15 to 20 minutes to 30 minutes before you  
24 went inside. Is that true?

25 A. Yes, if you are referring to the amount of time that we

1 were out on the driveway, I believe it was fairly short, it  
2 was whatever time it took to clear the house, which I think  
3 was probably under 15, but definitely under 30.

4 Q. Okay. Which is why you gave a range of 15 to 30?

5 A. Yes.

6 Q. I understand it could be a little shorter, not likely to  
7 be longer than 30 minutes?

8 A. Correct.

9 Q. And so if we were to take 7:59 -- because you would  
10 agree with me you are still seated -- not you, but Agent  
11 Pinette -- seated in the same manner in Defendant's Exhibit  
12 5 as he is in Defendant's Exhibit 6, and we take 7:59, we  
13 back out 15 minutes, then certainly by 7:46 you had  
14 encountered Mr. Purbeck in the driveway; correct?

15 A. I think that makes sense. Yes.

16 Q. And you wouldn't quibble with me, or maybe you would,  
17 that it could be even earlier than that, but it was  
18 certainly sometime 7:30 or later?

19 A. I think so. Yes.

20 Q. Let's next take a look at what is marked and introduced  
21 as Defendant's Exhibit 7. All right. I am sure that is the  
22 right one.

23 A. They look the same. Or actually this one, this one has  
24 a Coke in it.

25 Q. All right. We will go with Defendant's Exhibit 7. We

1 will put Defendant's Exhibit 7 up on the screen so we can  
2 see what we are doing. Now, Defendant's Exhibit 7, let me  
3 make sure that I am opening the right one. Pop over to  
4 properties. All right, what is the date and time you have  
5 there?

6 A. August 21, 2019, 8:04 a.m.

7 Q. And do you recognize what Defendant's Exhibit 7 is  
8 showing?

9 A. It's a picture of some of the computers and monitors in  
10 Mr. Purbeck's office.

11 Q. Okay. And in particular, one of them is turned on;  
12 correct?

13 A. Correct.

14 Q. I want you to hang on to 7, let's not get rid of that,  
15 and get you over to Defendant's Exhibit 11.

16 A. Yep. Those are the same.

17 Q. Looking at Defendant's Exhibit 11, they appear to be the  
18 same as Defendant's Exhibit 7, except the right-hand monitor  
19 has been turned off?

20 A. Yes. That seems to be correct. And there are other  
21 changes as well, but that is one of the changes.

22 Q. What other changes?

23 A. For example there is not the coffee cup or the Coke can  
24 or the oil.

25 Q. Right. All kinds of stuff on the desk that is no longer

1       there. So something has happened from Defendant's Exhibit 7  
2       to Defendant's Exhibit 11; correct?

3       A. Yes.

4       Q. Fair enough. I think that is a fair point you make. I  
5       want to focus on the monitor though. So among the changes  
6       between Defendant's Exhibit 7 and Defendant's Exhibit 11 are  
7       that in 7 the right-hand monitor is on and in 11 the  
8       right-hand monitor is off; correct?

9       A. Correct.

10      Q. Let's go to my thumb drive. Same photo?

11      A. Same photo.

12      Q. All right. And looking at Defendant's Exhibit 11, when  
13      was that taken?

14      A. August 21, 2019, 1:16 p.m.

15      Q. Okay. So we know at that point the -- at that point we  
16      know that the right-hand monitor had been turned off;  
17      correct?

18      A. Correct.

19      Q. So now our window is 8:04 to 1:16 p.m.; correct?

20      A. Correct.

21      Q. Okay. Let's go to Defendant's Exhibit 10 -- 9. Look at  
22      that. The same one?

23      A. The same one.

24      Q. All right. Properties. And what time is the date and  
25      time for Defendant's Exhibit 9?

1 A. August 21, 2019, 11:05 a.m.

2 Q. So, just to work through these -- that is Defendant's  
3 Exhibit 9, right?

4 A. Yes.

5 Q. So Defendant's Exhibit 9 looks like this and you say  
6 that is 11:05 a.m. Correct?

7 A. Yes, sir.

8 Q. And Defendant's Exhibit 11 is this one here, which is at  
9 1:16 p.m. Correct?

10 A. Yes, sir.

11 Q. And if I need to pop back over, I am happy to do it,  
12 okay? And Defendant's Exhibit 7 is this one here with the  
13 monitor is on at 8:04 a.m.

14 A. I mean, I don't recall at this point the time stamp, but  
15 that sounds roughly correct.

16 Q. I am not trying to trick you. I just want to make sure  
17 I get my times right.

18 A. Actually I think 8:04 does sound right.

19 Q. So 8:04 right here?

20 A. Yes, sir.

21 Q. That is Defendant's Exhibit 7. 11:05, right?

22 A. Right.

23 Q. That is Defendant's Exhibit 9.

24 A. Correct. Yes.

25 Q. Okay. And Defendant's Exhibit 11, 1:16 p.m.

1 A. Correct.

2 Q. So if we look at Defense 11 and Defense 9, we see we are  
3 missing the Coke can or whatever the -- soda can and cup and  
4 stuff like that?

5 A. Yes.

6 Q. But the real distinguishing factor between Defendant's  
7 Exhibit 9 and Defendant's Exhibit 11, other than maybe some  
8 small details you will pick up on, is that the right-hand  
9 monitor has gone from on to off; correct?

10 A. Correct.

11 Q. Now, if I understand things, you had fourteen FBI  
12 employees there; correct?

13 A. Correct.

14 Q. And nine agents. And I guess that makes five employees;  
15 correct?

16 A. Yes. Correct.

17 Q. But you also had some outside individuals who came to  
18 help as well from Intermountain West Regional Forensics  
19 Laboratory; correct?

20 A. That's correct.

21 Q. Now, do you recall that when you, that morning, so  
22 sometime between when you first entered the house to I guess  
23 when you left the house, that you were involved with this  
24 monitor that was turned on, that you came over there and had  
25 a conversation with these Intermountain West Forensic

1 Computer people about that monitor?

2 A. I mean, we weren't talking about the monitor, but my  
3 recollection from looking at the report was, yes, I helped  
4 triage the computer to make sure we could shut it down  
5 without losing evidence.

6 Q. Would a different way of saying triage it is that you  
7 checked the lock screen settings of the Windows Operating  
8 System on that computer --

9 MR. HERSKOWITZ: Objection. We object. We think  
10 it is outside the scope of the hearing. Plus it is -- we  
11 were hoping some questions would tie it up, but this is  
12 outside the scope of the hearing.

13 MR. HALL: I think it is well-within the scope of  
14 the hearing. What I am trying to establish is the time that  
15 the interview, with respect, ended. And that is why I am  
16 doing each of these different time stamps, so we can do  
17 that. I believe, since we don't have an exact record, we  
18 are having to do it by sign posts, and I believe this  
19 conversation I am asking him about, and getting ready to ask  
20 further about, will establish the time that he was involved  
21 with these computers and will further show that the  
22 difference between when the computer was on and when it was  
23 off ties into when the interview had ended. So that is why  
24 I am using these time stamps, not because I am off on my  
25 other motions trying to sneak in evidence about this. I has

1 to do with the timing of the interview and portions of the  
2 interview where certain information was gleaned from  
3 Mr. Purbeck, which is exactly what we are doing here today.

4 THE COURT: If you will stick to the time stamps  
5 that you've been doing, I will allow those questions, but  
6 don't stray beyond that area.

7 MR. HALL: Yes, sir. I am not violate the Court's  
8 rule. But let me -- I do need to -- so I need to be able to  
9 ask him -- because I've got the time stamps, I am good  
10 there, but I need to ask him about this conversation because  
11 it is going to tie into those time stamps. In other words,  
12 I believe he had a conversation with these people that I  
13 would hopefully be able to associate at what point that  
14 happened.

15 THE COURT: I will allow that.

16 MR. HALL: Okay. I just wanted to make sure that  
17 I wasn't running afoul.

18 THE COURT: Yes, sir.

19 BY MR. HALL:

20 Q. Back to this conversation. Did you in fact have a  
21 conversation with Intermountain West Regional Computer  
22 Forensic Laboratory about that you personally checked the  
23 lock screen settings of the Windows operating system on the  
24 computer, and determined the computer was set to not lock  
25 automatically?

1 A. Yes, I believe that is correct.

2 Q. And I guess I can go -- I won't spend a lot of time  
3 showing right now, but I can if I need to, but in addition  
4 to these photographs, you actually had additional --  
5 additional photographs were taken of the various different  
6 tabs that were open on this computer; right?

7 A. That is correct.

8 Q. I'm not asking you any more about that, I just wanted to  
9 establish that conversation took place. Now then, am I also  
10 correct that as part of that conversation, in talking to  
11 Intermountain West Regional Computer Forensics folks, that  
12 you asked that nothing further be conducted on this machine  
13 until after the interview with Mr. Purbeck was completed?

14 A. I don't recall that, but it is in the report. So I have  
15 no recollection that it is different from that.

16 Q. So that sounds right to you; correct?

17 A. I believe it to be correct.

18 Q. Okay. And so tying it back in to Defendant's Exhibit 9  
19 and 11, then am I safe in saying that in fact -- let me ask  
20 you this as well. And am I also right that ultimately you  
21 came back, and the same computer we've been talking about in  
22 Defendant's Exhibit 7, 9, and 11, you came back in,  
23 confirmed there was no mounted encrypted volumes, and then  
24 soft shut down the computer and disconnected it so it could  
25 be collected?

1 A. I think so. Yes.

2 Q. That is something you did personally; correct?

3 A. Yes.

4 Q. So given that, am I right in saying that looking  
5 Defendant's Exhibit 9, Defendant's Exhibit 11, we can have  
6 some confidence that you conducted that shutdown, soft  
7 shutdown and disconnection at some point after 11:05 a.m.,  
8 but before 1:16 p.m.?

9 A. Yes. That sounds correct.

10 Q. We don't know where, but we just know here at 1:16  
11 Exhibit 11 is off, and here Exhibit 9, at 11:05 it is on;  
12 correct?

13 A. Correct.

14 Q. And am I right that we can further, based on your  
15 interactions with the Intermountain West Regional Computer  
16 folks, ascertain that the interview, that you had asked them  
17 don't do anything with the computer until after the  
18 interview is completed, had to have been completed at some  
19 point after 11:05 a.m.?

20 A. I mean I think, as I testified on direct, you know, the  
21 interview didn't have -- it wasn't like the interviews done  
22 now. It wasn't a, to my recollection, a hard and fast  
23 termination to the interview. I remember that, you know, it  
24 was front-loaded with information, we got through the  
25 critical phase, there was a part we got hard drive, we got

1 passwords and talked about computers. It was probably kind  
2 of in that phase once I started, as I testified, going into  
3 the house, testing the password. The interview, parts of  
4 the interview, may have persisted past that, but it was kind  
5 of in that phase where I was coming in to verify the  
6 password and look at the computers that that computer was  
7 likely shut down.

8 Q. That is actually a better question than -- your answer  
9 is better than the question I asked. So let me ask it that  
10 way so we are clear on the record. So if I understand your  
11 testimony, the critical part of the interview, with respect  
12 to getting passwords and stuff, would have occurred at some  
13 point, and then you went inside with that information to try  
14 it out, and that would have happened sometime -- and that's  
15 at or around the time that you turned off this computer that  
16 is on in Defendant's Exhibit 9; correct?

17 A. I'm sorry --

18 Q. Sure. Strike that question. That was a terrible  
19 question. Looking at Defendant's Exhibit 9, and based on  
20 what you just testified to, that the critical part of the  
21 interview when you got the passwords, that is when you  
22 started coming in, and that is when you would have tested  
23 the password and shut down the computer in Defendant's  
24 Exhibit 9; correct?

25 A. If I may correct that.

1 Q. You may.

2 A. So when I was referring to the critical part of the  
3 interview I was talking about once we got to the point where  
4 Mr. Purbeck accepted responsibility for being Lifelock and  
5 admitted to his hacks. I believe I testified on direct that  
6 that happened within an hour-and-a-half of the interview  
7 starting; and that afterwards we had a conversation about  
8 the victims and the computers. So we would have been --  
9 when I refer to that critical part I was talking about  
10 basically the confession. And then it was sometime after  
11 that that we talked about the computers, that I was given  
12 the VeraCrypt password, and when I went into the office to  
13 test the password.

14 Q. Okay. I am not asking -- I'm sorry, I think I am not  
15 asking a clear question, and that is fine. So to state it  
16 again, I understand you are saying the critical part was  
17 when he made some kind of admission statement to you;  
18 correct?

19 A. Correct.

20 Q. Fair enough. I want to ask you about when you got the  
21 passwords. And so when you got the passwords from him, am I  
22 right, that that is when you went inside the house, and that  
23 is when you tested them, and that is when you closed down  
24 this computer that we've been talking about in Defendant's  
25 Exhibit 9?

1 A. That is probably when it happened, but to clarify, the  
2 password was not for that computer.

3 Q. Fair enough. But your recollection, as you testify here  
4 today, is that's about the time when it occurred, somewhere  
5 in that window?

6 A. Correct. It would have been within the time -- I  
7 believe it was within the time that I was coming in to  
8 examine the evidence in the office.

9 Q. And we would know that would have happened sometime  
10 between 11:05 and 1:16 because of Defendant's Exhibit 9 and  
11 Defendant's Exhibit 11, correct?

12 A. I think it is correct to say that some portion of that  
13 would have been. I mean, I might have started coming into  
14 the office prior to that time, but I just know that that  
15 monitor was shut off between the time that you just  
16 reiterated.

17 Q. Right. I guess the part I am trying to get at is when  
18 you got the passwords. And if I understood your testimony,  
19 and again, if you need to correct me, you do. But if I  
20 understand, what you just testified to was I got the  
21 passwords, I went in there, I tested them, I understand that  
22 is what it is, but that is when I started shutting down  
23 these computers, and this would have been the computer I  
24 shut down, so it had to be after 11:05; correct?

25 A. Let me check my understanding of your question.

1 Q. Sure.

2 A. I believe you are trying to use the time between  
3 approximately 11 o'clock and 1 o'clock to create bookmarks  
4 around when I received the password.

5 Q. Correct.

6 A. I don't think that it is necessarily in that time frame  
7 because, you know, we had this critical part of the  
8 interview, I believe it was sometime before 9:30, and then  
9 we had a further interview about -- we continued the  
10 interview to explore like the victims and the computers, and  
11 then at that point I came in and started testing the  
12 password. That may have been before I triaged this computer  
13 and turned it down. The password that we are referring to  
14 is not the password -- it doesn't have anything to do with  
15 this computer, but it does have something to do, to your  
16 point, when I began to enter the office. Sometime in that  
17 time period we are talking about I was in the office, but I  
18 probably had the password before then.

19 Q. Right. Or a way of putting it would be that certainly  
20 between by 11:05, certainly between 11:05 and 1:16 at some  
21 point it, sounds like you don't recollect, you had the  
22 password by that point?

23 A. I believe I had it before 11:00. Yes.

24 Q. I want to show you what we have marked for  
25 identification Defendant's Exhibit 14.

1 A. It's the same.

2 Q. Looking over here at Defendant's Exhibit 14. Same one?

3 A. Same one.

4 Q. And go to properties and go to details. And what does  
5 it say about the time there?

6 A. August 21, 2019, 1:59 p.m.

7 Q. And am I right that what this is showing and is an  
8 inventory sheet and certainly a page of the search warrant  
9 that is on the front stoop of Mr. Purbeck's home?

10 A. That's correct.

11 Q. And if we were to turn over here to 15 and 16 -- tell us  
12 what 15 and 16 are.

13 A. 15 is a picture of Mr. Purbeck's front door where the  
14 door is shut, and 16 is a picture of the front of the house.

15 Q. And those kind of photographs that were taken by the FBI  
16 as they exited and left the premises?

17 A. That is correct.

18 Q. All right. So we go to 15. Make sure I have the right  
19 one. Yes?

20 A. It's the same one.

21 Q. And 16?

22 A. It's same one.

23 Q. And I am not going to display those, but I will look at  
24 the properties. So Exhibit 15, what is the date and time  
25 there?

1 A. August 21, 2019, 2 o'clock p.m.

2 Q. Okay. And the very last one that was taken, photograph  
3 that was taken by the FBI?

4 A. August 21 --

5 Q. I've got to go to the details. Your all right, you're  
6 fine. But what does it say right there? I'm looking at  
7 date taken. All of these are date taken, right?

8 A. Yes. That is how it is documented in the metadata for  
9 that file.

10 Q. And what is that?

11 A. August 21, 2019, 2 o'clock p.m.

12 Q. Okay. All right. So these are the last photographs  
13 that were taken. That corresponds to your recollection that  
14 we were done with the search at 2:00 p.m.; correct?

15 A. Correct.

16 Q. And that corresponds with your written report as to when  
17 the search was done; correct?

18 A. It does correspond to the written report for the search.  
19 I don't know if I wrote the search 302, I think it was Agent  
20 Harshbarger, but that is consistent.

21 Q. Okay. But your recollection on all fronts, you guys,  
22 meaning you and the FBI, were done and completed by 2:00  
23 p.m.; correct?

24 A. Correct.

25 Q. So circling back to this caveat you dropped on me a

1 little bit ago, having now gone through it, it looks like  
2 that timer or that clock date and time stamp on the FBI  
3 camera was pretty close to everything that you recollected  
4 and that was recorded as to when the search ended; correct?

5 A. I would still say that is it is roughly accurate.

6 Q. Okay. You testified earlier you ended around 2:00 p.m.  
7 Correct?

8 A. Around 2:00 p.m.

9 Q. So it looks like that is consistent with what the FBI  
10 camera photographs show; correct?

11 A. Correct.

12 Q. Let me show you Government's Exhibit 6. That's the  
13 consent to assume online identity form. Correct?

14 A. Correct.

15 Q. Now, there's a date on here, but no time on here;  
16 correct?

17 A. That is correct.

18 Q. And am I right that there is no -- do you usually put a  
19 time?

20 A. We don't typically put times on these, for whatever  
21 reason.

22 Q. You do put times on Miranda rights forms; correct?

23 A. I think you are right. Yes.

24 Q. I mean, you have used the FBI Miranda rights forms  
25 before?

1 A. I have.

2 Q. And to your recollection -- I can show you one if you  
3 want. But your recollection is they have a time spot for  
4 them, right?

5 A. I would believe you could say they do, but I don't  
6 recall the form offhand completely.

7 Q. Remind me before we're done and I'll show it to you.  
8 Alright, so turning back to this. I don't need to get all  
9 deep in your credentials, but you are in the computer  
10 forensics investigation group? What's the right word?

11 A. So I am in one of two cyber squads in Atlanta.

12 Q. Which means what?

13 A. It means we investigate computer intrusions, you know,  
14 in pretty much all shapes and sizes.

15 Q. And to do that, I don't know how to say this without  
16 sounding jerky, but let me just try it anyway. I mean, you  
17 are not just -- you have a particular -- in addition to  
18 being an FBI agent, you have a particular expertise to focus  
19 on computers. Correct?

20 A. I do.

21 Q. And so in that sense your expertise is different than  
22 maybe just a regular field agent insofar as it relates to  
23 computers; correct?

24 A. I mean, I am a regular field agent with background  
25 experience in computers and FBI training in computers and

1 forensics.

2 Q. You mean certifications?

3 A. Many. Yes.

4 Q. As relates to computers?

5 A. Yes.

6 Q. Such as what?

7 A. I mean, I can go back. I've been programming since I  
8 was in elementary school. Worked professional for about 12  
9 years. I did many Microsoft certifications, completed the  
10 MSCS certification series, Java programmer.

11 Q. I am going to interrupt you, but if you need to keep  
12 going, I'm going to let you keep going, but I think it is  
13 safe to say you know all about computers; correct?

14 A. I mean computers is -- there is a lot that goes into  
15 computer engineering and computer ecosystem. I wouldn't say that I  
16 know everything about everything. But I do have -- my whole  
17 life has been about computers.

18 Q. You know about VeraCrypt?

19 A. I am familiar with VeraCrypt.

20 Q. And you recognize that VeraCrypt is an encryption  
21 mechanism that makes it very difficult to get into without a  
22 password; correct?

23 A. Correct.

24 Q. And in fact, would you agree with me that but for the  
25 passwords that Mr. Purbeck provided you through this

1 interview process, it would be essentially impossible for  
2 you -- for the FBI to have accessed the information that was  
3 encrypted on those devices?

4 A. Actually I would like to disagree with you on that.

5 Q. Why?

6 A. I understand that VeraCrypt is a very strong type of  
7 encryption, and if we look at Mr. Purbeck's password it was  
8 leviathan, l-e-v-i-a-t-h-a-n, plus tilde 129. So 14  
9 characters. That is a very complex password. Leviathan is  
10 a word, it's a dictionary word. It does not count to the  
11 complexity of a password. So essentially his password was  
12 leviathan plus tilde 129, which is a six-character password,  
13 which is very weak. I looked at the -- I don't know if I  
14 can say this, but the filing your expert did about the  
15 complexity of the password, and when I saw used the same  
16 program that he did and gave it x criteria that it was a  
17 six-character password, it said we can brute force it in  
18 under one minute. Additionally, the papers we found from  
19 Mr. Purbeck's house included a handwritten list of  
20 passwords. Many of those passwords started with the word  
21 leviathan and had other random letters and numbers behind  
22 it. So it would have been I think trivially simple for us  
23 to brute force the password for that computer using the  
24 information we found in the search and also the weaknesses  
25 in the password he chose itself.

1 Q. All right. That's what you -- you never did that  
2 though, correct?

3 A. We did do that for some of the other computers found in  
4 the search, and we did successfully decrypt one additional  
5 computer.

6 Q. There are other ones that you did not decrypt; correct?

7 A. Right, but I don't know the complexity of those  
8 passwords.

9 Q. But the 14 character -- correct me if I am wrong. The  
10 14 character password is incredibly complex; correct?

11 A. If it is random, a 14-character password would be  
12 complex.

13 Q. Meaning it would take hundreds of years to break, brute  
14 force; correct?

15 A. Sorry to cut you off. Yes, correct.

16 Q. You didn't cut me off. It's no problem. And your  
17 counterpoint to me, from what I understand, is well that is  
18 fine, but I don't count it, even if it is 14 characters, I  
19 don't count it as a 14-character password either because  
20 somehow the first leviathan numbers I am not going to count,  
21 or I would have, from some other documents found in  
22 Mr. Purbeck's house, identified the leviathan and figured  
23 that is a recurring theme, then I am just working with six  
24 characters?

25 A. Correct. This computer password was vulnerable to a

1 dictionary attack.

2 Q. What?

3 A. He chose dictionary words, so in decryption methodology,  
4 people will often use dictionary words because they can be  
5 remembered, so many forms of trying to crack encryption  
6 guess at passwords. And Mr. Purbeck chose -- I'm sorry --  
7 guess at passwords by using dictionary words. And  
8 Mr. Purbeck chose a dictionary word for his password.

9 Q. So that is what you think you could have done, but you  
10 never actually did that with respect to this computer for  
11 this password; correct?

12 A. It wouldn't be a valid test because we knew the  
13 password.

14 Q. So setting aside the validity of the test, you  
15 nonetheless didn't go back to see whether you could do that  
16 without knowing what you already knew; correct?

17 A. As I said, we attempted to decrypt other computers that  
18 we couldn't decrypt, and we were able to successfully get  
19 into at least one additional computer using the dictionary  
20 word leviathan and our password-cracking technology.

21 Q. Okay. Now I am going to circle back with you and kind  
22 of work through some of the events of that day.

23 THE COURT: Mr. Hall, let me interrupt just a  
24 moment, just for planning purposes. Ms. Burgess was pushed  
25 into service today. She was not planning to be here. And

1 she's been going at it now for a good hour-and-a-half.  
2 Sounds like you've probably got some more time to go with  
3 Agent Coffin, it's a little after noon. How much longer do  
4 you anticipate you need on cross?

5 MR. HALL: I'm going to be here a little bit  
6 longer with Agent Coffin.

7 THE COURT: We are around the lunch hour. I don't  
8 think we're going to take don't we will take a full hour.  
9 And I apologize we got a started a little later this  
10 morning. Ms. Zarkowsky made the arrangements that were  
11 necessary and they somehow slipped through the cracks. So I  
12 appreciate Ms. Burgess filling in for us on short notice.  
13 But there a number of witnesses. The Government has one  
14 other witness, and I think you have a number of witnesses.  
15 We've talked about whether we might be able to complete this  
16 hearing today. So I will suggest we take a short break and  
17 resume -- it is 12:05 now. I would like to resume by 12:40.  
18 Enough time to get something to eat, check out the downtown  
19 choices here in Newnan if you have the opportunity to do so,  
20 or if you brought your meal, that is fine. But then I would  
21 like for us to move along as we can.

22 Mr. Purbeck included an affidavit with your motion  
23 that made some very specific allegations. I would just soon  
24 get to those and not piddling around with timestamps, okay?

25 MR. HALL: Yes, sir.

1 THE COURT: We are in recess.

2 (break from 12:08 p.m. until 12:41 p.m.)

3 THE COURT: You may resumed that question.

4 MR. HALL: Agent Coffin, back on that question  
5 about the dictionary password. Am I not right that even  
6 with a dictionary password that is partially a dictionary  
7 word you would still have to try upper case and lower case  
8 to be able to break it that way?

9 A. Right.

10 Q. It doesn't make it a simple password just based on the  
11 fact that it's a real word; correct?

12 A. I mean, I think it that does dramatically reduce the  
13 simplicity of the password. I have to think about to what  
14 degree, but I think it is quite significant.

15 Q. Changing from hundred of years to break it to still  
16 substantial amount of time to break it though; right?

17 A. No.

18 Q. I want to turn your attention back to your 302. Is that  
19 in chronological order?

20 A. I do believe it is, yes, mostly in chronological order.

21 Q. Okay. And then turning over to Government's Exhibit 6,  
22 the consent to assume online identity, I understand that you  
23 didn't write down the time that that was signed. Did you  
24 ever advise Mr. Purbeck, or you or Agent Pinette advise Mr.  
25 Purbeck, that he did not have to sign that form?

1 A. I don't recall what admonishment we gave him  
2 specifically around this form other than what is already  
3 written on it.

4 Q. Do you have your 302 in front of you? I meant to leave  
5 it up there.

6 A. You handed it to me at one point. I will see if it is  
7 in these papers. Yes, I found it.

8 Q. Okay. Am I right that, with respect to the portion of  
9 the 302 -- first, it was a nine-page 302; correct?

10 A. Correct.

11 Q. And with respect to the portion of the 302 where it  
12 references to Mr. Purbeck voluntarily providing consent,  
13 that is words kind of towards the end of it on page 9  
14 towards the bottom; correct?

15 A. Yes.

16 Q. All right. And so assuming or understanding that this  
17 is a generally chronological order of events, that it sounds  
18 like you got this password towards the end of your interview  
19 with Mr. Purbeck, the consent form?

20 A. Yes I believe that is roughly correct.

21 Q. Let me ask you directly. And I listened to your whole  
22 direct testimony, I understood what you testified. Let me  
23 ask you directly, Agent Coffin, did you place your hand on  
24 Mr. Purbeck's shoulder when you and the other agents first  
25 approached on the morning of August 21 and say, Robert, or

1 something to the effect of Robert?

2 A. I don't believe so.

3 Q. Does that mean you didn't, or you don't recollect  
4 whether you did?

5 A. I don't think I did it.

6 Q. Understanding your gun was not drawn, was Agent  
7 Pinette's gun drawn, Agent Harshbarger's gun drawn, or any  
8 other agent's gun drawn?

9 A. I think the way we documented it, which was my best  
10 recollection, which is we didn't recall when we wrote the  
11 302 any firearms visible as we approached Mr. Purbeck.

12 Q. Were all the firearms -- you were armed and the other  
13 agent were armed?

14 A. All the agents would have been armed. Yes.

15 Q. Would they have been -- if I don't use the right lingo  
16 let me know and I will change it. But side-armed as in  
17 pistols, or would some people have had long guns?

18 A. I don't recall seeing any long guns that day.

19 Q. Were you wearing tactical body armor?

20 A. I would have been wearing body armor. I don't know  
21 whether it was over or under.

22 Q. Were other agents wearing body armor?

23 A. We were all wearing body armor.

24 Q. Fourteen employees?

25 A. Nine.

1 Q. The non-agent employees don't have body armor?

2 A. Correct. The non-agent employees are not required to  
3 wear body armor during the searches.

4 Q. Is the just the entry team and the people who first  
5 approached were just the agents with the body armor?

6 A. Yes.

7 Q. So once the house is cleared, then the non-agent  
8 employees are the ones who enter and conduct additional  
9 business?

10 A. That is correct.

11 Q. Would Nicole Hideman, for example, be a non-agent FBI  
12 employee would not be wearing body armor?

13 A. Let me check the 302 to determine whether she is an  
14 agent. I need to determine whether she's an agent or not.

15 Q. Got it. Setting that aside, if she is not an agent, then  
16 she would be in the group that would come in after the house  
17 is cleared; correct?

18 A. Correct.

19 Q. Again, you don't know whether she is an agent or not,  
20 that is because she is not out of your office; correct?

21 A. Correct.

22 Q. And that means that whatever time she started taking the  
23 photographs, it would have been after the house had been  
24 cleared; correct?

25 A. Except for maybe the placard. The first photo might

1 have been taken before the house was cleared.

2 Q. But the subsequent ones would have been taken after the  
3 house had been cleared.

4 A. Yes.

5 Q. Okay. For instance, Defendant's Exhibit 3 up there with  
6 the open door would be an example of that; correct?

7 A. Correct.

8 Q. Did you grab Mr. Purbeck by the arm, bicep, or other  
9 portion of his body to direct him to walk back inside the  
10 house?

11 A. No.

12 Q. Did you touch Mr. Purbeck at any time in any way in the  
13 time that you first approached him until you arrived in the  
14 backyard and sat down with Agent Pinette to talk to him?

15 A. No.

16 Q. Am I right that either you or Agent Pinette advised Mr.  
17 Purbeck that you are here with the FBI to execute a search  
18 warrant and that his employer, Ada County, was going to be  
19 coming out as well?

20 A. No, that is not true.

21 Q. Did you advise him at all that Ada County was en route  
22 or would be coming out to the scene?

23 A. Not initially. To answer your question. If we are  
24 talking about on the driveway --

25 Q. On the driveway did you do that?

1 A. No.

2 Q. Inside the house did you do that? Tell him that?

3 A. No.

4 Q. Outside in the backyard did you tell him that?

5 A. No.

6 Q. Did you tell him at any time that Ada County would be  
7 coming out to talk to him?

8 A. At some point later in the search we found out that Ada  
9 County was coming to speak to Mr. Purbeck. And I don't  
10 recall who gave that information to Mr. Purbeck.

11 Q. Would you recall if it was you?

12 A. I believe so, but I have no recollection of telling Mr.  
13 Purbeck that Ada County was coming.

14 Q. Do you specifically remember any conversation with  
15 Mr. Purbeck about Ada County en route, coming, going to be  
16 here, anything, however you want to phrase it?

17 A. No.

18 Q. Do you recall Agent Pinette having a conversation about  
19 Ada County while you were in the driveway?

20 A. No.

21 Q. All right. While you walked through the house with him?

22 A. No.

23 Q. In the backyard?

24 A. No.

25 Q. So you think it was either you -- excuse me -- it was

1 not you, it was not Agent Pinette, but it was someone else  
2 who advised Mr. Purbeck that Ada County was coming out?

3 A. I don't know. I mean, it might have been Agent Purbeck  
4 (sic.), but I just no recollection of who it was who told  
5 Mr. Purbeck that Ada County was coming.

6 Q. You said Agent Purbeck. Did you mean Agent Pinette?

7 A. My apologies. I don't recall whether Agent Pinette or  
8 anybody else was the one to tell Mr. Purbeck that Ada County  
9 was coming.

10 Q. Sounds like you have no recollection that occurring  
11 regardless of who or how it happened.

12 A. I remember learning that it was going to happen, but I  
13 have no recollection of who would have informed Mr. Purbeck.

14 Q. Did you know before you arrived at the search scene that  
15 Ada County was going to be coming out?

16 A. Did not know before the search.

17 Q. Am I right that in this situation -- I am using "you"  
18 collectively -- you, Agent Pinette, other members of the FBI  
19 team, would not allow Mr. Purbeck to see Sarah Ganger?

20 A. We would have allowed him to see her if he requested it.

21 Q. When I say Sarah Ganger, you know who I am referring to?

22 A. Yes.

23 Q. That is his companion that he lives with in his house;  
24 correct?

25 A. Yes, sir.

1 Q. So are you saying Mr. Purbeck never asked to see  
2 Ms. Ganger?

3 A. Not to my knowledge.

4 Q. Do you know anything about Ms. Ganger's state or status  
5 when the FBI entry team came into the house?

6 A. No.

7 Q. That is because you were outside with Mr. Purbeck?

8 A. I was outside with Mr. Purbeck.

9 Q. Did you have a conversation with Agent Pinette about  
10 whether you should interview Mr. Purbeck inside the home or  
11 outside of in the backyard?

12 A. We did talk about that. Yes.

13 Q. And ultimately am I right that -- well, let me ask you.  
14 Did you prefer to do it inside the home, or Agent Pinette  
15 prefer to do it outside?

16 A. We both preferred to do it outside.

17 Q. Did you walk Mr. Purbeck outside while you or Agent  
18 Pinette was holding him in any way?

19 A. I don't recall either one of us touching him.

20 Q. Am I right that you told Mr. Purbeck where to sit?

21 A. No.

22 Q. You did not tell Mr. Purbeck to sit in this chair?

23 A. No.

24 Q. With respect to Mr. Purbeck wanting to sit in a  
25 particular chair and you directing him to sit in another

1 chair, did that happen with you and Agent Pinette and Mr.  
2 Purbeck?

3 A. I don't -- I have no recollection of that.

4 Q. Look over at Exhibits 5 and 6 so it is fresh in your  
5 mind.

6 A. Okay. I have 5 and 6.

7 Q. All right. Now, that photo, you would agree with me,  
8 shows that the sun is coming in and hitting the agent we  
9 believe to be Agent Pinette in the back of the head;  
10 correct?

11 A. Correct.

12 Q. In what you show as six?

13 A. Yes.

14 Q. And so right over here?

15 A. Actually, I am sorry.

16 THE COURT: It is not showing up on the screen.

17 BY MR. HALL:

18 Q. That is five I am showing you?

19 A. I mean, yes. That is five. I see the camera flash.

20 Q. I am going to switch over to six. That's the one I want  
21 to talk about. Does that look like six to you?

22 A. Yes. It does.

23 Q. Let's talk about six. All right. So we believe this to  
24 be Agent Pinette; correct?

25 A. Correct.

1 Q. All right. And to my right, in that orientation, given  
2 the direction he is facing, Mr. Purbeck would be facing  
3 opposite him outside of the frame of the camera; correct?

4 A. Likely, yes.

5 Q. To your recollection, is that the way you were situated?

6 A. Yes. My recollection, both myself and Special Agent  
7 Pinette were facing Mr. Purbeck.

8 Q. And so we don't know -- we don't see a photo of you. We  
9 see one of Agent Pinette; correct?

10 A. Correct.

11 Q. Do you recall that you are saying sitting in a way  
12 facing him, or just guessing that is the way it was?

13 A. No, I remember being able to see Mr. Purbeck during the  
14 interview. I was certainly looking at him.

15 Q. So in that photograph at least, if the sun is coming in  
16 and hitting Agent Pinette in the back of the head, and  
17 Mr. Purbeck is sitting across from Agent Pinette, and  
18 perhaps across from you as well, then the sun would be  
19 hitting him in the face; correct?

20 A. Probably. Yes.

21 Q. At that time, in that backyard, as you have already  
22 testified, there was shade available, but at least we know  
23 insofar as this photograph is concerned, the questioning  
24 circle was not in the shade; correct?

25 A. Correct.

1 Q. Did you order Mr. Purbeck to give his phones over you?

2 A. No. I know that by the end of the day I had his phones  
3 because I was the one who is listed as the collecting agent.  
4 I don't recall at what point during the day that I received  
5 the phones. Unfortunately I don't have a recollection of  
6 when that occurred.

7 Q. You do agree that at some point you took the phones from  
8 Mr. Purbeck, his phones from his person, and took them into  
9 your possession; right?

10 A. I did have possession of them. I don't recall whether  
11 he handed them to me or how that occurred.

12 Q. Were you outside at some point when Mr. Purbeck's cat  
13 ran outside the house and he stood up to get his cat and put  
14 it back in the house and was told either by you or Agent  
15 Pinette to sit back down?

16 A. I don't have a recollection of that.

17 Q. When you say you don't have a recollection, does that  
18 mean it didn't happen, or you just don't know one way or the  
19 other?

20 A. It means I don't remember it happening.

21 Q. I believe you testified on direct, but just to be clear,  
22 from the time that you and Agent Pinette took Mr. Purbeck  
23 outside, he remained outside that entire time until the  
24 search was ended with the exception of being brought inside  
25 to use the bathroom on one occasion; is that correct?

1 A. I don't know if it was one occasion, but that is  
2 generally correct. Yes.

3 Q. Is the point you're making to me that maybe he went to  
4 the bathroom more than once, but you don't recollect?

5 A. The point I was just trying to make is I don't have  
6 first-hand knowledge how many times Mr. Purbeck went inside  
7 to use the restroom.

8 Q. But your understanding -- your recollection and general  
9 understanding is from the time that you and Agent Pinette  
10 decided you were going to interview Mr. Pinette in the  
11 backyard, he remained in the backyard but for one, or you  
12 say perhaps more than one, occasion where he was brought in  
13 to use the bathroom and then taken back outside; correct?

14 A. Correct.

15 Q. Am I right that other than that initial cup of coffee  
16 that was provided to Mr. Purbeck, he was not given another  
17 cup of coffee till he went to the bathroom at some occasion  
18 later in the day?

19 A. I don't know whether he had any other coffee between  
20 these two incidents.

21 Q. You never gave Mr. Purbeck any water.

22 A. I don't recall doing that personally.

23 Q. You never saw any FBI agent give Mr. Purbeck any water;  
24 correct?

25 A. I don't remember -- I don't have a recollection of any

1 agent doing that.

2 Q. Were you drinking water during this time?

3 A. I know I drank water during the time. I don't recall  
4 whether I had water with me while I was outside with Mr.  
5 Purbeck.

6 Q. Agent Pinette, to your recollection, was also drinking  
7 water; correct?

8 A. Yes. I believe Agent Pinette drank water throughout the  
9 day, but I don't recall at what point, whether it was  
10 outside with Mr. Purbeck or not.

11 Q. Was it bottled water y'all brought, or did you get it  
12 there at the house?

13 A. There was some bottled water that was brought.

14 Q. So the FBI brought its own water; correct?

15 A. Yes. I believe so.

16 Q. And that is, to your recollection, what you were  
17 drinking?

18 A. Yes.

19 Q. And to your recollection, what the other agents were  
20 drinking?

21 A. Yes.

22 Q. You don't know of any agent ever offering any of that  
23 bottled water to Mr. Purbeck, do you?

24 A. I don't have any personal knowledge of that. No.

25 Q. Did you have a conversation, you or Agent Pinette in

1 your presence, have a conversation with Mr. Purbeck where he  
2 asked to see Sarah or where he said would he be allowed to  
3 see Sarah Ganger before you took him to jail, and the  
4 response was it all depended on how much he cooperated?

5 A. I don't recall him making that request.

6 Q. I guess I asked a bad question because it is compound.  
7 Do you remember him at any time asking would he be able to  
8 see Sarah before he had to leave with you or anything along  
9 those lines?

10 A. No, I don't remember him making that request.

11 Q. At one point in the afternoon or -- one point during the  
12 day, whether morning or afternoon, did either you or Agent  
13 Pinette, in your presence, ask Mr. Purbeck was the sun in  
14 his eyes?

15 A. I don't recall hearing that.

16 Q. All right. Do you recall an occasion where he expressed  
17 that the sun was in his eyes whether in response to a  
18 question asked by you or Agent Pinette or voluntarily, just  
19 unilaterally voluntarily he advised you and or your present  
20 Agent Pinette of that, and either you or Agent Pinette moved  
21 him from where he was to a different spot, but one that was  
22 still in the sun?

23 A. No.

24 Q. I know on direct testimony you stated that no one ever  
25 raised or yelled at Mr. Purbeck. Something to that effect.

1 Is that correct?

2 A. Correct.

3 Q. I want to draw your attention to your 302 again.

4 A. Okay.

5 Q. If you will turn over to the fourth page. And I want to  
6 draw your attention to the italics where it says: Agents  
7 then challenged Purbeck's recollection. Take a moment and  
8 refresh your recollection with that passage.

9 A. Yes, I see that.

10 Q. That is on page 4. So I guess just short of halfway  
11 through this experience where you challenge Purbeck's  
12 recollection of AlphaBay user. At that time did either you  
13 or Agent Pinette raise your voice at Mr. Purbeck?

14 A. No.

15 Q. Did you yell at him?

16 A. No.

17 Q. Did you speak to him in a stern or testy fashion?

18 A. No.

19 Q. You just -- the way you and I are communicating right  
20 now, kind of low key, that is how you said, Hey, we don't  
21 believe you?

22 A. Yes.

23 Q. Later on page 4 you see another italics note where it  
24 mentions that Mr. Purbeck asked about whether he needed an  
25 attorney. Correct?

1 A. Yes. Correct.

2 Q. That is in the sequence of events roughly where that  
3 exchange took place; correct?

4 A. Correct.

5 Q. And in your view, that was before any of the critical  
6 features of the interview occurred; correct?

7 A. Yes.

8 Q. And certainly before any password was provided; correct?

9 A. Correct.

10 Q. And certainly before he signed this consent to assume  
11 online identity; correct?

12 A. Correct.

13 Q. All right. Now, in addition to asking did he need an  
14 attorney, did he ask you to use his phone to call an  
15 attorney?

16 A. No.

17 Q. Did he ask you would you give him his phone back so that  
18 he could call an attorney?

19 A. I don't recall him asking that.

20 Q. Okay. Did he ask to use your phone or Agent Pinette's  
21 phone to call an attorney?

22 A. I don't remember him asking that.

23 Q. Did he express in any form or fashion that he wished --  
24 he did not have the means right there sitting there with you  
25 to make a phone call for an attorney, so could he use your

1 phone, his phone, or the phone inside, or some way to reach  
2 out and call an attorney?

3 A. No, he did not make that request.

4 Q. Is that because I asked you a compound question, or you  
5 are just saying any permutation of that, he never asked for  
6 an attorney?

7 A. He never asked for an attorney.

8 Q. And just to be clear, he never asked even to call an  
9 attorney to consult with an attorney?

10 A. Correct. He did not ask to call to consult an attorney.

11 Q. All right. Let me draw your attention now to this 302.  
12 So page 4, italics at the bottom. It says: Agents advised  
13 Purbeck that they could not provide legal advice, but that  
14 he was under no obligation to speak to agents at this time,  
15 and that it was his right to seek legal counsel before  
16 answering additional questions. Did I get that right?

17 A. That's right.

18 Q. Is that what happened?

19 A. Yes.

20 Q. Let me keep going. Agents then requested Purbeck to be  
21 expeditious in obtaining an attorney as they were  
22 interesting in continuing the interview with Purbeck  
23 regarding his activities and assistance he may be able to  
24 provide in the future. Did I get that right?

25 A. Yes.

1 Q. Is that what happened?

2 A. Yes.

3 Q. That is not a verbatim exchange, that is an italics,  
4 almost like a side note that you put into the 302 to reflect  
5 some event that occurred; right?

6 A. Correct.

7 Q. Why would you have in this 302 that you requested him to  
8 be speedy about calling an attorney if he had never asked to  
9 call an attorney?

10 A. I believe the way it came about was when we informed him  
11 that he had the right to call an attorney, we were then, you  
12 know, adding to that. And if you are going to choose to do  
13 so, doing it quickly would be advantageous because he would  
14 then be able to more effectively cooperate with us in our  
15 investigation.

16 Q. With the eye on that last part, if he was going to  
17 consult an attorney, do it speedily, because it would be  
18 more advantageous to him in cooperating, did you or agent  
19 Pinette say -- and I don't quote it exactly right, but  
20 something to the effect of, we are conducting simultaneous  
21 raids around the country, or we are here doing a raid on  
22 your house and there are other people being raided too, and  
23 whoever cooperates first gets the best deal?

24 A. I mean we definitely -- I do believe we communicated to  
25 him that cooperation could be in his benefit. I don't

1 recall exactly how it would have been worded.

2 Q. Okay. But at a minimum it was worded: If you choose to  
3 call an attorney do it quick because we need you to  
4 cooperate quick because it's to your advantage to cooperate  
5 quickly. Did I get that right?

6 A. Yes.

7 Q. Did you or Agent Pinette, in your presence, tell  
8 Mr. Purbeck something to the effect of if you get an  
9 attorney you will not get the best deal from the prosecutor,  
10 from the Government, from us? Don't bog down on the  
11 prosecutor part, but something to that effect?

12 A. No.

13 Q. Anything that even sounds like that?

14 A. No.

15 Q. In this exchange about an attorney, whether to call one  
16 or not call one speedily, it was after that that Mr. Purbeck  
17 first admitted that he was Lifelock; correct?

18 A. Correct.

19 Q. And that, to you, was at least the initial part of the  
20 critical phase of the interview; correct?

21 A. Correct.

22 Q. And at some point thereafter you had Mr. Purbeck sign  
23 this assumption of online identity form that is Government's  
24 Exhibit 6.

25 A. Correct.

1 Q. Now, after that occurred, did you or agent Pinette in  
2 your presence come with a Miranda rights form? You know  
3 what I mean by a Miranda rights form?

4 A. I do.

5 Q. Do you want me to show you one?

6 A. No.

7 Q. And handed that form to Mr. Purbeck and say something to  
8 the effect of if you agree with this, then say yes.

9 A. Is that your question?

10 Q. Yes.

11 A. That never happened. We did not present Mr.  
12 Purbeck with a Miranda form.

13 Q. Okay. I am going to ask you the same question, and I  
14 will add a part to get the whole concept in there; alright?  
15 Did you or Agent Pinette come back with a Miranda form, hand  
16 or show -- don't bog down in how it was conveyed -- but  
17 conveyed that form to Mr. Purbeck, and say something to the  
18 effect if you agree with this then say yes while holding  
19 some kind of audio recorder or recorder up to Mr. Purbeck  
20 for him to then record or memorialize whatever he said?

21 A. Absolutely not.

22 Q. Did you have a recorder on your person on August 21,  
23 2019?

24 A. No.

25 Q. Did you see Agent Pinette with a recorder on August 21,

1 2019?

2 A. No.

3 Q. You own a recorder; correct? For work purposes?

4 A. I do not personally. But our squad owns recorders.

5 Q. Pardon me?

6 A. Our squad owns recorders that can be used by agents, but

7 I do not have a personally-assigned recorder.

8 Q. You have access to recorders that you have used in the  
9 past; correct?

10 A. Correct.

11 Q. And Agent Pinette has one that he's used in the past;  
12 correct?

13 A. Correct.

14 Q. Are they all the same brand?

15 A. No.

16 Q. Different brands? Different kinds?

17 A. Yes.

18 Q. Different colors?

19 A. Yes.

20 Q. Among the group or corral of recorders that you have,  
21 you have some that are silver; correct?

22 A. I don't recall one that is silver. No.

23 Q. Are they black?

24 A. The one that I typically use I think is mostly black.

25 Yes.

1 Q. All right. So I understand you said no forms were  
2 handed to Mr. Purbeck, it just didn't occur. So I will ask  
3 this question anyway, alright? So did in fact you and/or  
4 Agent Pinette sign a Miranda form that was shown to Mr.  
5 Purbeck, sign that form as witnesses?

6 A. No.

7 Q. Okay. Do you recall seeing Agent Pinette looking at  
8 this watch, noting the time on this Miranda form that we've  
9 been discussing?

10 A. No.

11 MR. HERSKOWITZ: Object to the form of that  
12 question to the extent it implies there is a Miranda form.

13 MR. HALL: I understand.

14 THE COURT: He is acknowledging.

15 MR. HALL: I agree that he is denying that  
16 there -- I will ask a question.

17 BY MR. HALL:

18 Q. You are not saying this is not true -- this has not  
19 happened because there is no form to begin with; correct?

20 A. Right. We did not Mirandize him that day.

21 Q. You didn't even -- when you say Mirandize, you didn't  
22 even show him a Miranda form; correct?

23 A. Correct.

24 Q. So these questions that I've asked you about, did you or  
25 Agent Pinette sign the Miranda form or date or put the time

1 on the Miranda form? You are saying no you didn't see that  
2 now, not only because you didn't see that but also because  
3 you are saying that the Miranda form never existed.

4 Correct?

5 A. I don't know whether we actually had one in our  
6 portfolios or not, but we did not have a Miranda form that  
7 we began to fill out that day.

8 Q. That you showed to Mr. Purbeck in any form or fashion?

9 A. Correct.

10 Q. Okay. I understand that. Did you ever take Mr. Purbeck  
11 to the bathroom?

12 A. No.

13 Q. Did you witness him being taken to the bathroom?

14 A. Not that I recall.

15 Q. Do you recall agents drinking bottled water in front of  
16 Mr. Purbeck?

17 A. No.

18 Q. Do you recall that Agent Pinette moved Mr. Purbeck  
19 throughout the afternoon so that his chair would remain in  
20 the sun?

21 A. No.

22 Q. You are saying that just didn't happen?

23 A. Correct.

24 Q. On your direct, if I recollect, you said something to  
25 the effect of at least one time that he had moved -- that he

1 was in the shade or had moved to the shade. Did I get that  
2 right?

3 A. I believe what I testified to on direct, we were moving  
4 our chairs together into the shade out of the sun.

5 Q. Are you saying Mr. Purbeck was in the shade?

6 A. Until like I testified on direct, he stopped moving his  
7 chair and he remained in the sun.

8 Q. Oh. Okay. I misheard you then. I thought you said he  
9 stopped moving his chair and remained in the shade. So at  
10 what point did he stop moving his chair and remained in the  
11 sun?

12 A. I don't recall when that happened.

13 Q. Do you have a sense? Was it early in the day, middle of  
14 the day, later in the day?

15 A. It was while we were actively interviewing, so I would  
16 say it was within the first hour or the first three hours of  
17 the search that that occurred.

18 Q. It happened -- was getting online consent form, is that  
19 one of the last things that you guys did as part of your  
20 interview?

21 A. I believe it was later. We started filling out that  
22 form as a way to capture his password, so it wasn't like  
23 right at the end, but it was in the latter portions of the  
24 interview.

25 Q. And what we've been talking about him choosing not to

1 move his chair but remain in the sun, that happened before  
2 that online consent form was signed, or after it?

3 A. I think it was before.

4 Q. Prior to that you are saying Mr. Purbeck could pick up  
5 his -- did he pick up his chair and move it himself?

6 A. Yes, he did.

7 Q. Did you or Agent Pinette move the chair for him?

8 A. No.

9 Q. Did he express to you anything about when you -- it  
10 sounds like you were in the sun, the sun is moving, you and  
11 Agent Pinette are moving your chairs to the shade, and what  
12 you are testifying to is that Mr. Purbeck decided to just  
13 stay in the sun?

14 A. At some point. For the first couple of times we moved,  
15 he moved with us. And there was some point in time that he  
16 declined to continue to move out of the sun into the shade.

17 Q. Did he ever express anything to you as to why he is  
18 staying in the sun?

19 A. He did not explain why.

20 Q. Did you ever ask him or say anything to him about why  
21 are you staying in the sun if we keep moving into the shade?

22 A. I did not.

23 Q. Were you present when Ada County showed up and  
24 interviewed Mr. Purbeck?

25 A. I was present when they showed up. I remember at least

1     seeing the detective in the front yard. But I was not  
2     present for any portion of their interview with Mr. Purbeck.

3     Q. Did you see how they were situated and where they were  
4     sitting?

5     A. No, I did not.

6     Q. Were you present when Agent Heap came out and took over  
7     kind of sitting outside with Mr. Purbeck?

8     A. I don't believe so.

9     Q. And you already testified that to your recollection Mr.  
10    Purbeck was not sunburned?

11    A. Correct.

12    Q. Never saw him sweating?

13    A. I never saw him sweat.

14    Q. Didn't have difficulty speaking?

15    A. No.

16    Q. No difficulty standing?

17    A. No.

18    Q. All right. Never mentioned anything about having cramps  
19    or -- abdominal cramps or heat cramps or anything along  
20    those lines?

21    A. Not that I recall.

22    Q. Were you present when Mr. Purbeck was searched and his  
23    wallet was removed from his person?

24    A. I was not.

25    Q. Are you aware of that occurring?

1 A. I remember an incident where the hard drive was removed  
2 from his person. I don't recall when the wallet was removed  
3 from his person.

4 Q. Tell me about the hard drive.

5 A. I only heard this from reading a report. I wasn't a  
6 first-hand witness of this.

7 Q. That is fine.

8 A. I recall that --

9 Q. That's fine. I misunderstood. I thought you were  
10 recollecting that you had seen this.

11 A. Okay, no, I was not present for the hard drive, and I  
12 don't recall when the wallet was supposedly removed from  
13 him, from his person.

14 Q. You weren't present for the wallet being removed?

15 A. Not that I recall.

16 Q. Am I right that you did not participate in the search  
17 that was done by the Boise agents and employees?

18 A. I mean, I was a participant in the search, but mostly in  
19 an advisory capacity.

20 Q. You were not actively engaged in the searching conduct?

21 A. Correct.

22 Q. At least -- I understand you went in and out of the  
23 house sometimes, but for the most part, at least for the  
24 first good portion of the day, you were outside with Agent  
25 Pinette interviewing Mr. Purbeck?

1 A. Correct.

2 Q. If I can have just a second?

3 THE COURT: Certainly.

4 BY MR. HALL:

5 Q. Let me bring you back to this business about yelling.

6 You remember we talked about yelling a little bit ago?

7 A. Yes, sir.

8 Q. So your testimony has been that not only did you not  
9 yell, Agent Pinette never yelled or raised his voice.

10 Correct?

11 A. Correct.

12 Q. I believe your testimony then that no other agent came  
13 out and yelled or spoke in excited fashion or loud fashion  
14 towards Mr. Purbeck; correct?

15 A. Not that I recall.

16 Q. Was there an occasion when you and Agent Pinette were in  
17 the backyard speaking to Mr. Purbeck when an agent came  
18 outside and asked Mr. Purbeck about the presence of a  
19 firearm in the house?

20 A. I do believe I remember that.

21 Q. Who was that agent?

22 A. I don't recall.

23 Q. All right. Was it a Boise-based agent?

24 A. Yes, it would have had to have been a Boise-based agent  
25 because the only other two Atlanta agents were agent Pinette

1 and myself.

2 Q. And -- male or female?

3 A. I don't recall.

4 Q. And did that agent coming out to ask -- what did the  
5 agent say about a gun?

6 A. I just remember the question being asked, and Mr.  
7 Purbeck explaining that the gun was in a cabin or house in  
8 Mountain Home. Something like that.

9 Q. When that agent came out, was that agent speaking  
10 loudly?

11 A. I don't recall there being any points in the day that  
12 somebody raised their voice to Mr. Purbeck.

13 Q. How about in an excited fashion or in an urgent fashion?

14 A. I didn't hearing anything that -- no.

15 Q. To your recollection, was the agent who was inquiring,  
16 or in addition to the firearm, just wanted to know if there  
17 was a weapon in the house for officer safety?

18 A. Yes, that's correct.

19 Q. So are you saying that the agent who came out to inquire  
20 about this dangerous instrumentality just kind of spoke in a  
21 low key tone?

22 A. Yes, I believe so.

23 Q. I understand you did not see Mr. Purbeck toward the very  
24 end of the day before the FBI left; is that correct?

25 A. Yeah, I don't have a recollection of seeing him towards

1 the end.

2 Q. Okay. Do you recollect seeing that one of the plastic  
3 chairs that had been -- that you or Agent Pinette or Mr.  
4 Purbeck -- you know the plastic chairs I am talking about,  
5 right?

6 A. Yes, I do.

7 Q. All right. Do you remember seeing one of those has a  
8 broken leg or had a broken leg at some point during the day?

9 A. Yes. In fact, I was there when the chair broke.

10 Q. Tell me about that.

11 A. As I recall, you know, myself and Agent Pinette were  
12 sitting speaking to Mr. Purbeck, and then at some point Mr.  
13 Purbeck's chair broke. And I can't recall if it was because  
14 he was leaning back into it or what, but it did break during  
15 the interview.

16 Q. And do you remember at what portion, during the time you  
17 were interviewing, when that occurred?

18 A. No, I'm sorry. I don't recall when it happened.

19 Q. And it caused him to fall out of the chair and onto the  
20 ground?

21 A. Yes.

22 Q. And he was in the sun before he fell out of the chair;  
23 correct?

24 A. I don't know the timing. I don't know if he was in a  
25 sunny position at that time or not.

1 MR. HALL: Judge, if I may have one more second,  
2 please. (Pause). That is all my questions.

3 MR. HERSKOWITZ: Nothing further.

4 THE COURT: Do you have another witness to call?

5 MR. MUND: The Government would next like to call  
6 Special Agent Pinette.

7 THE COURT: All right.

8 Special Agent Pinette,

9 Sworn

10 THE CLERK: Please state and spell your name for  
11 the record.

12 THE WITNESS: My name is James Pinette, J-a-m-e-s,  
13 last name P-i-n-e-t-t-e.

14 THE COURT: You may proceed, Mr. Mund.

15 MR. MUND: Thank you.

16 Direct Examination

17 BY MR. MUND:

18 Q. Good afternoon, Agent Pinette. Can you please explain  
19 to the Court, what do you do for a living?

20 A. I am an FBI agent. I've been working for the FBI for  
21 18 years. First ten years were working counterterrorism  
22 matters, and the last eight have been working cyber crime  
23 and national security.

24 Q. And are you familiar with the case presently before the  
25 Court, United States versus Robert Purbeck?

1 A. Yes.

2 Q. And in August of 2019, were you -- let me take that  
3 back. Are you currently one of the co-case agents this  
4 matter?

5 A. Yes.

6 Q. And back in August of 2019, were you one of the co-case  
7 agents, FBI co-case agents on the case?

8 A. Yes.

9 Q. Where were you on the morning of August 21, 2019?

10 A. Before 8:00 a.m., we were outside of Mr. Purbeck's  
11 residence.

12 Q. And what you doing there? Why were you there?

13 A. We were -- we were looking to conduct a search warrant  
14 on his house, and I was sitting in a vehicle, watching the  
15 house.

16 Q. And did you intend to interview Mr. Purbeck that day?

17 A. Well, we had hoped he would talk to us.

18 Q. And why did you hope that he would talk to you?

19 A. Well, we hoped that he would talk to us to fill in some  
20 gaps in the investigation, and he might have some -- he  
21 might have been in a position to assist us.

22 Q. And did you have an arrest warrant for Mr. Purbeck?

23 A. No.

24 Q. Were there any charges pending against Mr. Purbeck at  
25 that time?

1 A. No.

2 Q. Was there any plan to take him into custody that day?

3 A. No.

4 Q. So you mentioned you were located inside of a vehicle?

5 A. Correct.

6 Q. What gear were you wearing that day?

7 A. Well, I don't recall exactly what clothing I had on. I  
8 had a bulletproof vest on and a weapon, which is standard  
9 for doing a search warrant.

10 Q. A weapon, what kind of weapon was it?

11 A. A Glock. A pistol.

12 Q. A firearm?

13 A. Yes.

14 Q. Did you draw your firearm at any point during that day?

15 A. No.

16 Q. About how many other law enforcement personnel were with  
17 you that day?

18 A. I don't know the exact number there.

19 Q. Was there anyone else in the car, the vehicle with you,  
20 that you recall?

21 A. Yes.

22 Q. Do you remember who was in the car with you?

23 A. I don't.

24 Q. Do you remember, for the other law enforcement  
25 personnel, how were they dressed?

1 A. They had -- they were dressed casually. They had like  
2 khaki pants and polo shirts, I guess. I don't remember  
3 exactly.

4 Q. Do you recall whether or not other -- if the other law  
5 enforcement officials had firearms?

6 A. Well, we all had firearms. Yeah.

7 Q. Do you remember seeing any other firearms drawn?

8 A. No.

9 Q. And as you -- okay. When you were in your car, or in  
10 the car, was there a point in time in which you observed  
11 Mr. Purbeck?

12 A. Yes. He -- Mr. Purbeck, shortly before 8 o'clock, had  
13 exited his house and made his way over to one of the  
14 vehicles in the driveway.

15 Q. In the driveway --

16 A. In the driveway of his residence.

17 Q. And then what happened at that point in time?

18 A. There was a call to execute the search warrant. So I  
19 got out of the vehicle and started to approach the  
20 residence.

21 Q. And what happened as -- sorry, to clarify, you  
22 approached the residence?

23 A. Correct.

24 Q. Okay. And then what happened?

25 A. Well, I had reached the vehicle and Mr. Purbeck, and I

1 started to explain to Mr. Purbeck that we were with the FBI  
2 and that we had a search warrant for his house. And that he  
3 wasn't under arrest.

4 Q. Did he provide any additional information about the  
5 search warrant at that time?

6 A. Did I provide any?

7 Q. Or let me take back the question. So you said -- you  
8 testified that -- let me rephrase the question. So when you  
9 were speaking with Mr. Purbeck, did you provide any other  
10 information to him at that time?

11 A. Well, when I had immediately reached him, it was advised  
12 him that I worked for the FBI and that we had a search  
13 warrant for his residence, that he was not under arrest, and  
14 that we would explain to him further if he was willing to  
15 talk to us.

16 Q. And did Mr. Purbeck express willingness to speak  
17 further?

18 A. Yes.

19 Q. And how was that expressed?

20 A. He just said okay.

21 Q. Was Mr. Purbeck placed under arrest?

22 A. No.

23 Q. Was he placed in handcuffs?

24 A. No.

25 Q. Was he advised that he could not leave?

1 A. No.

2 Q. Did you or -- do you recall anyone else at this time  
3 advising him that he could leave?

4 A. Not -- not at the moment. Not at that moment but a  
5 little later. I didn't -- I guess what was said was more  
6 that he -- initially, it was you're not under arrest, and we  
7 would only talk -- the team that was there had collected at  
8 the door and wanted to do an initial clear of the house. At  
9 some point after that clearing was done, we made our way  
10 into the house, Agent Coffin, myself, and Mr. Purbeck, and  
11 at that time I had mentioned to Mr. Purbeck that if he  
12 stayed, he wasn't -- you know, we might restrict his  
13 movement inside the house. But that's it. That's it.

14 Q. So let me break that up a little bit. Before you  
15 entered the house, do you recall -- or did anybody show him  
16 search warrant documentation?

17 A. I did not. I did not show him that. I did not see  
18 anybody show him.

19 Q. And to clarify by "him," I meant Mr. Purbeck.

20 A. Correct.

21 Q. Was -- so was Mr. Mr. Purbeck allowed to roam freely  
22 within the house?

23 A. No.

24 Q. And why is that?

25 A. Well, for a number of reasons. For safety reasons of

1 everyone in the house, we -- it's a stressful situation for  
2 people, and, you know, there may be weapons in the house.  
3 Someone may, you know, reach for a weapon. It's also for  
4 evidentiary reasons. We don't want people to hide evidence  
5 or destroy it when the search is being conducted.

6 Q. And at any point, did Mr. Purbeck ask to leave?

7 A. No.

8 Q. Did anybody ask for his car keys?

9 A. Not to my recollection.

10 Q. So your initial interaction with him, where did that  
11 take place?

12 A. Outside in -- over by his vehicle kind of up by the  
13 garage door.

14 Q. And what was Mr. Purbeck's demeanor at that point in  
15 time?

16 A. He was calm.

17 Q. And what was your demeanor at that time?

18 A. The same. Calm.

19 Q. And was there anyone else there with you as you were  
20 speaking with Mr. Purbeck by his vehicle, by the garage?

21 A. Agent Coffin was.

22 Q. And what was Special Agent Coffin's demeanor at that  
23 time?

24 A. The same. Calm.

25 Q. Did anyone point a firearm at Mr. Purbeck at any point

1 in time?

2 A. Not that I saw.

3 Q. Did anyone yell at Mr. Purbeck?

4 A. Not that I heard.

5 Q. Did you see anyone grab Mr. Purbeck at any point in  
6 time?

7 A. No.

8 Q. Special Agent Pinette, did you grab Mr. Purbeck at any  
9 point in time?

10 A. No.

11 Q. You mentioned that there was a clear -- there was a  
12 clearing that was happening at the house?

13 A. Yes. There was an initial like safety clear of the  
14 residence.

15 Q. And about how long did it take to clear the residence?

16 A. The initial clear, probably ten minutes. Five, ten  
17 minutes.

18 Q. And did you continue the -- did you continue speaking  
19 with Mr. Purbeck in the driveway at that time?

20 A. No.

21 Q. Where did you continue the conversation or the  
22 interview? Where did that take place?

23 A. Well, after we walked into the house, we looked around  
24 for a place to talk to Mr. Purbeck, and realized the house  
25 might not be the best place to talk to Mr. Purbeck.

1 Q. And when you say, "We looked around the house," "we" --  
2 who is "we" in that?

3 A. Agent Coffin and I myself. We were looking for a  
4 suitable place to talk to Mr. Purbeck, and there was no  
5 place to sit in the house. And there was a lot of activity  
6 going on and so we thought the backyard might be a good  
7 idea.

8 Q. Do you recall how the house smelled?

9 A. Well, I mean, it didn't smell good. It smelled like --  
10 it was a strong ammonia in the air, like a cat, and feces.

11 Q. So how did you and Special Agent Coffin and Mr. Purbeck  
12 go from the driveway to the backyard?

13 A. We went through the house and through the kitchen into  
14 the backyard.

15 Q. And did you go direct -- did you walk directly through  
16 the house?

17 A. No. We walked in, looked around for a moment for a  
18 suitable place, decided that we would go outside. We  
19 started to make our way through the kitchen. Mr. Purbeck  
20 asked to refill his coffee, so he did that, and we went out  
21 back.

22 Q. Was Mr. Purbeck physically restrained as you were  
23 walking through the house?

24 A. No.

25 Q. Was Mr. Purbeck physically restrained at any point in

1 time that day?

2 A. No.

3 Q. So who decided to -- the location of where the interview  
4 would take place?

5 A. I don't recall.

6 Q. Did Mr. Purbeck object to the -- holding the interview  
7 in the backyard?

8 A. No.

9 Q. Did he suggest any other place to go?

10 A. No.

11 Q. Can you describe the interview setting?

12 A. Well, it was initially just outside his back door. We  
13 found some lawn chairs and sat down to talk.

14 Q. Was there any way to exit the backyard?

15 A. I have no -- I don't -- I don't recall. I mean, other  
16 than through the house, I'm not sure if there was a clear  
17 passage on either side of the house or not.

18 Q. Could Mr. Purbeck have left the backyard?

19 A. Yes.

20 Q. What was the weather like outside?

21 A. It was -- I mean, it was pleasant outside.

22 Q. And this is when you first went outside; correct?

23 A. Yes.

24 Q. What was Mr. Purbeck wearing?

25 A. He had a polo shirt on and khaki pants, I believe.

1 Yeah.

2 Q. And you mentioned lawn chairs. How were the lawn chairs  
3 arranged?

4 A. Just like in a triangle.

5 Q. And who arranged that triangle?

6 A. I don't recall.

7 Q. Did you tell Mr. Purbeck where to sit?

8 A. No. I think we just all sat in chairs.

9 Q. Where were you located with respect to Mr. Purbeck?  
10 About how far apart were you guys?

11 A. Three feet maybe.

12 Q. And how about the distance between you -- or Mr. Purbeck  
13 and Special Agent Coffin?

14 A. Same, same distance.

15 Q. Was there anyone else participating in the interview  
16 outside?

17 A. No.

18 Q. Anyone else, I should say, besides you, Mr. Purbeck, and  
19 Special Agent Coffin?

20 A. No.

21 Q. And about what time was it when you went through in  
22 backyard?

23 A. It had to be right around 8 o'clock.

24 Q. Did you read Mr. Purbeck or advise Mr. Purbeck of his  
25 Miranda rights?

1 A. No.

2 Q. And why is that?

3 A. Well, he wasn't in custody, so we don't typically  
4 Mirandize somebody who's not in custody.

5 Q. And what was Mr. Purbeck's demeanor at this point in  
6 time?

7 A. He was still calm.

8 Q. Did he appear nervous?

9 A. No.

10 Q. Did he appear willing to speak with you?

11 A. Yes.

12 Q. Did he say that he was going to speak with you?

13 A. Yes.

14 Q. Had he asked to leave?

15 A. No.

16 Q. Did you or Special Agent Coffin ask him for his phones,  
17 any cell phones?

18 A. I didn't ask him for his phone. I don't recall Agent  
19 Coffin asking him for his phone.

20 Q. Okay. Do you recall whether Mr. Purbeck was searched or  
21 patted down prior to the beginning of the interview?

22 A. I don't recall the agent's name who had first talked to  
23 Mr. Purbeck. I recall him saying that he had done a  
24 high-risk search on Mr. Purbeck.

25 Q. What does a high-risk search entail?

1 A. It is just like a quick search of your waist area for --  
2 you know, for weapons.

3 Q. So when you began the interview, was it -- did you audio  
4 record it?

5 A. No.

6 Q. Why not?

7 A. Well, it wasn't standard procedure to interview -- to  
8 record interviews, audio record them. We just -- we record  
9 them by taking notes.

10 Q. And did you have an audio recorder on you that day?

11 A. No.

12 Q. You said you record them by taking notes. Did you take  
13 notes during this interview?

14 A. Yes.

15 Q. And did you subsequently create any other documents or  
16 records of that interview?

17 A. Well, from the notes, from both my notes and Agent  
18 Coffin's, and my recollection, I drafted a 302, a document  
19 that summarizes the interview.

20 Q. And during the course of the interview, did you ask any  
21 questions related to Mr. Purbeck's online activities?

22 A. Yes.

23 Q. Did Mr. Purbeck provide any online usernames that he  
24 uses?

25 A. Yes.

1 Q. And were any of those usernames of particular interest?

2 A. Yes.

3 Q. And why is that?

4 A. Well, we -- because one of them was a username of a  
5 hacker that was part of our investigation.

6 Q. Did Mr. Purbeck ask to speak to a lawyer at any point  
7 during the interview?

8 A. He didn't ask to speak to a lawyer. At some point in  
9 the interview he mentioned it. He wasn't -- trying to think  
10 of the exact wording. I -- something to the effect, I don't  
11 know if I need an attorney, or something like that.

12 Q. And did -- in what context did his -- did this statement  
13 arise?

14 A. Well, we were talking about his online identities in  
15 different markets, darknet markets he was in, and at some  
16 point we challenged him on additional -- an additional  
17 Alphabay usernames. And at that point -- I believe it was  
18 at that point that he asked if -- should I get an attorney  
19 or something to that effect. Like I said, I can't remember  
20 exactly.

21 Q. Was this exchange summarized and documented in the 302?

22 A. Yes.

23 Q. You said that you challenged him. Did you raise your  
24 voice when you challenged Mr. Purbeck?

25 A. No.

1 Q. Did you tell -- so how did you respond when this subject  
2 came up?

3 A. About the attorney?

4 Q. So I believe you just -- well, take a step back. So I  
5 believe you just testified that at some point -- well, let  
6 me ask --

7 MR. MUND: Can I ask the question again, Your  
8 Honor?

9 THE COURT: Yes, sir.

10 BY MR. MUND:

11 Q. So in what -- how did the subject of a lawyer come up in  
12 the course of the interview?

13 A. Well, we were -- we were asking about his online  
14 identities, and at some point, you know, we asked him if  
15 there was any other usernames that he was using on Alphabay.  
16 And at some point -- at some point there he asked, do I need  
17 an attorney, or something to that effect.

18 Q. And how did you respond?

19 A. I said I couldn't offer legal advice. That he was under  
20 no obligation to speak to us.

21 Q. And how did Mr. Purbeck respond to that?

22 A. He -- after that, I believe he asked how much time he  
23 was looking at.

24 Q. Did Mr. Purbeck ever subsequently mention a lawyer  
25 during the interview?

1 A. No.

2 Q. Did he ever ask to call a lawyer?

3 A. No.

4 Q. Did he ever ask to use a phone?

5 A. No.

6 Q. Did Mr. Purbeck ever ask to borrow a phone from either  
7 you or Special Agent Coffin?

8 A. No.

9 Q. Was there any point during the interview that you  
10 interviewed Mr. Purbeck by yourself?

11 A. No. There was a point where Agent Coffin had -- someone  
12 conducting the search had come out and had a question for  
13 Agent Coffin and he left. And I might have been finishing  
14 up a conversation. But as soon as that topic ended, we  
15 stopped talking.

16 Q. And why was that?

17 A. Well, because -- there's a number of reasons.  
18 Typically, we have two agents participate in these  
19 interviews. And it's part of a story where -- that everyone  
20 is involved, and I didn't want Agent Coffin to be -- you  
21 know, to come back and we're on some new topic. And he was  
22 the case agent, so we just waited.

23 Q. And what was the tone or tenor of the conversation?

24 A. The entire interview was calm.

25 Q. Were there any points of levity?

1 A. Yes. At some point when we were talking about his  
2 Alhabay usernames, one of his usernames that he used, you  
3 know, he said that he was given the name by his friends in  
4 college because he wasn't good with girls, so we kind of all  
5 chuckled about that.

6 Q. Did anyone threaten Mr. Purbeck at any time?

7 A. No.

8 Q. Did anyone make any promises to Mr. Purbeck at any  
9 point?

10 A. No.

11 Q. About how long did the interview last for?

12 A. Two hours or less.

13 Q. Did you move the chairs, the lawn chairs or the seats  
14 during the course of the interview?

15 A. Yeah. We moved them a couple times.

16 Q. Why was that?

17 A. I mean, as the sun was moving, we -- you know, if we  
18 were in direct sun, we would be hot. We would move the  
19 chairs.

20 Q. And who moved Mr. Purbeck's chair?

21 A. He did.

22 Q. Did you ever intentionally place Mr. Purbeck's chair in  
23 the sunlight?

24 A. No.

25 Q. Did Mr. Purbeck at any point appear to be sick or ill at

1 any point?

2 A. No.

3 Q. Did Mr. Purbeck ever appear to be drenched in sweat?

4 A. No.

5 Q. Did Mr. Purbeck at any point mention any medical  
6 conditions?

7 A. No.

8 Q. Did Mr. Purbeck at any point express discomfort?

9 A. No.

10 Q. Did Mr. Purbeck ever get up from his chair during the  
11 course of the interview?

12 A. Yes. At some point he had gone into the house to get a  
13 drink and use the restroom, I believe.

14 Q. And did -- at any point in time, was Mr. Purbeck ordered  
15 to remain seated in his chair during the interview?

16 A. No.

17 Q. Did any of the chairs collapse during the interview?

18 A. Yes. Mr. Purbeck's chair collapsed at some point during  
19 the interview.

20 Q. And -- I'm sorry?

21 A. Mr. Purbeck's chair.

22 Q. And what happened then?

23 A. We just helped him up and got him another chair.

24 Q. Did you take any breaks during the interview?

25 A. Well, like I said, we -- Mr. Purbeck had gone into the

1 residence. That was a break. There were a couple of times  
2 that Agent Coffin got called away we stopped talking.

3 Q. When Mr. Purbeck went into the residence, did he go by  
4 himself?

5 A. No.

6 Q. And why is that?

7 A. Kind of the same reason for, you know, not -- you know,  
8 just safety reasons and evidentiary reasons, you know.  
9 Typically, control the space a little bit. We don't want  
10 people going for, you know, hidden weapons or to destroy  
11 evidence at some point, so we usually control the  
12 environment while we're there.

13 Q. And while outside, did Mr. Purbeck ever request any food  
14 or water?

15 A. No.

16 Q. Had Mr. Purbeck requested food or water outside, would  
17 it have been -- would he have received it?

18 A. Of course.

19 Q. Did Mr. Purbeck ever ask to end the interview?

20 A. No.

21 Q. How did the interview end?

22 A. I don't -- I don't recall like an official end to the  
23 interview. I think at some point we had been made aware  
24 that someone from Ada County was there, and we were kind of  
25 wrapping up our interview. So I don't remember an official

1 end.

2 Q. And -- you mentioned Ada County. What do you mean by  
3 Ada County?

4 A. Somebody from Ada County, I believe it's the Sheriff's  
5 office, was there to talk to Mr. Purbeck.

6 Q. Did you leave Mr. Purbeck at that time?

7 A. No.

8 Q. Why not?

9 A. Because I listened to the Ada County interview in case  
10 Mr. Purbeck provided information relevant to the FBI  
11 investigation.

12 Q. And were there other FBI agents there present besides  
13 yourself?

14 A. No.

15 Q. Did Mr. Purbeck appear to be sick or ill during that  
16 interview?

17 A. No.

18 Q. What was the tone of that interview?

19 A. Calm. Same.

20 Q. Did you ask any questions of Mr. Purbeck during the Ada  
21 County interview?

22 A. No.

23 Q. Did you direct Ada County to ask any questions on your  
24 behalf during that interview?

25 A. No.

1 Q. Did you audio record that interview?

2 A. No.

3 Q. Did you otherwise document that interview?

4 A. I took notes and created a 302, a summary of the  
5 interview.

6 Q. And during the course of that interview, did anyone  
7 search Mr. Purbeck?

8 A. I did.

9 Q. And what prompted the search?

10 A. At some point during the Ada County interview,  
11 Mr. Purbeck said that he had a hard drive in his pocket, and  
12 he stood up and took a hard drive out of his pocket. And at  
13 that point it made me wonder if anyone had ever, you know --  
14 and I heard they did a high-risk search, but did anyone look  
15 for other evidence or weapons. So at that point I did a  
16 quick search of Mr. Purbeck.

17 Q. And how long was the search of Mr. Purbeck about?

18 A. It was really quick. Five, ten seconds, maybe.

19 Q. Did you touch Mr. Purbeck's genitals?

20 A. No.

21 Q. Did you arrest Mr. Purbeck that day?

22 A. No.

23 Q. Did you arrest anyone that day?

24 A. No.

25 Q. At any point during that day, were any prosecutors,

1       assistant US attorneys either inside or in the immediate  
2       vicinity of Mr. Purbeck's home?

3       A.   Not that I was aware of.

4       Q.   Did you see Mr. Purbeck again after the August 21, 2019  
5       search and interview?

6       A.   Yes.

7       Q.   And when was that?

8       A.   Mr. Purbeck had flown to Atlanta for a proffer session  
9       with the Government.

10      Q.   And was he accompanied by an attorney?

11      A.   Yes.

12      Q.   What was Mr. Purbeck's demeanor at that meeting?

13      A.   It was the same as his first interview; he was calm, he  
14      was relaxed.

15      Q.   Has Mr. Purbeck ever called you by phone?

16      A.   Yes.

17      Q.   Has Mr. Purbeck ever left you a voice mail?

18      A.   He left me a voice mail once.   Yeah.

19      Q.   And when was that?

20      A.   December that year.

21      Q.   I show you what is marked as Government's Exhibit 7,  
22      which is a CD initialed -- let me take that out.   So are  
23      you familiar with this --

24                 MR. MUND:   Your Honor, may I approach?

25                 THE COURT:   You may.

1 BY MR. MUND:

2 Q. Are you familiar with this CD marked Government's  
3 Exhibit 7?

4 A. Yes.

5 Q. In it --

6 A. Those are my initials.

7 Q. Your initials?

8 A. Uh-huh (affirmative).

9 Q. And is this CD a fair and accurate representation of  
10 your documentation of the voice mail you received?

11 A. Yes.

12 MR. MUND: Your Honor, we would like to move to  
13 enter Government's Exhibit 7, a CD disc with an audio  
14 recording of a voice mail Special Agent Pinette received  
15 into evidence.

16 MR. HALL: I'm going to object, but not -- I'm  
17 fine with it coming in. I just wanted it stated its purpose  
18 for coming in, the relevance of it, I understand. But for  
19 purposes of the record, I would like the relevance stated by  
20 the Government. That's what I'm asking.

21 THE COURT: Mr. Mund.

22 MR. MUND: Yeah. So the purpose is not for the  
23 truth of the statements, but rather the tone and demeanor of  
24 the voice mail.

25 MR. HALL: Okay. I think with that statement, I

1       won't raise an objection.

2               THE COURT: It is admitted.

3               MR. MUND: Your Honor, I'd like to play the  
4       recording, please.

5               THE COURT: Yes.

6               MR. MUND: I'm having technical difficulties. If  
7       I could have one moment, please.

8               THE COURT: Yes, sir.

9               MR. SISTLA: So I will just represent for the  
10      counsel, I have it on my laptop. Just one second.

11                       (Audio is played.)

12               MR. MUND: May I please confer with counsel?

13               THE COURT: You may.

14                       (Pause).

15       BY MR. MUND:

16       Q. Special Agent Pinette, do you recognize the voice on the  
17       voice mail, or that -- on the audio recording?

18       A. Yes. Mr. Purbeck.

19       Q. How would you describe Mr. Purbeck's tone during this  
20       call?

21               MR. HALL: Objection. Speculation. It speaks for  
22       itself.

23               THE COURT: Overruled.

24       A. It was like his interview. Calm.

25       BY MR. MUND:

1 Q. And one last question. Are you -- two questions. Are  
2 you familiar with AUSA Nathan Kitchens?

3 A. Yes.

4 Q. And was Nathan Kitchens present during the search or  
5 otherwise near the vicinity of Mr. Purbeck's house on August  
6 21, 2019?

7 A. No.

8 MR. MUND: No more questions, Your Honor. Thank  
9 you.

10 THE COURT: Mr. Hall, you may cross-examine.

11 MR. HALL: Yes, sir.

12 Cross-Examination

13 BY MR. HALL:

14 Q. Good afternoon, Agent Pinette, I'm Andrew Hall. I don't  
15 believe that we've actually met before, have we?

16 A. Just out in the hallway a minute ago.

17 Q. Okay. Well, other than that, so I just wanted to make  
18 sure you remember who I was. So, good afternoon. I'm going  
19 to have some questions for you, as I know you know. So you  
20 and Agent Coffin prepared an FBI 302 report regarding the  
21 interview that you and Agent Coffin conducted with Robert  
22 Purbeck on August 21, 2019; correct?

23 A. Right.

24 Q. All right. It's a nine-page affair; correct?

25 A. Correct.

1 Q. All right. Have you had a chance to look at that  
2 recently?

3 A. Yes, I have.

4 Q. Okay. Do you feel pretty familiar with it, or would it  
5 help you to take a look at it?

6 A. I'm fairly familiar with it.

7 Q. All right. At any point you want to take a look at it,  
8 I'll grab you one. Okay?

9 A. Okay.

10 Q. All right. So, do you recall in the beginning, first  
11 page of it, first paragraph, there's a sentence in there  
12 that reads, "Interviewing agents observed no weapons visible  
13 during this approach"?

14 A. Correct.

15 Q. All right. Did you put that in there?

16 A. I don't know if I was a contributor to that or Agent  
17 Coffin was.

18 Q. It's a joint report though; right?

19 A. Yes.

20 Q. Why is that sentence in there?

21 A. Because it was kind of like a low-key search. We didn't  
22 want to alarm Mr. Purbeck. That's it.

23 Q. I probably didn't ask a good question, so I want to ask  
24 it slightly differently. Okay? I'm asking that that  
25 particular sentence I just read to you --

1 A. Right.

2 Q. All right. Let me back up. 302 is an official FBI  
3 document; correct?

4 A. Correct.

5 Q. It's designed to memorialize the events that you or  
6 whomever the author may be, in this case, you, say occurred  
7 in any given instance; correct?

8 A. Correct.

9 Q. All right. And one way to memorialize events is to  
10 record them; correct?

11 A. Correct.

12 Q. I mean, in the abstract; right? That's one way to do  
13 it; correct?

14 A. Correct.

15 Q. And on occasions in the past, you have, in fact,  
16 recorded, audio or video recorded interviews you've had with  
17 individuals; correct?

18 A. Not in a noncustodial situation.

19 Q. That's fine, but somewhere in your law -- how long have  
20 you been a law enforcement officer?

21 A. 18 years.

22 Q. All right. How long have you been with the FBI?

23 A. 18 years.

24 Q. Okay. So somewhere in those 18 years, on more than one  
25 occasion, you've recorded some kind of interview you had

1 with another person who's not an FBI person; correct?

2 A. Correct.

3 Q. Okay. So it's possible, but when that doesn't happen,  
4 then the FBI 302 serves as the FBI's memorialization of the  
5 events that occurred; correct?

6 A. It's a summary.

7 Q. Fine. It's not verbatim, but it's -- you don't have  
8 anything else; right? You have your memory and you have the  
9 302; correct?

10 A. Correct.

11 Q. All right. So my question is specific to that sentence.  
12 Why was the sentence, "Interviewing agents observed no  
13 weapons visible during this approach, interviewing agents  
14 observed no weapons visible during this approach," why was  
15 that sentence included in the 302?

16 A. I don't know, sir. I don't believe I put that one in  
17 there, but it was a statement that --

18 Q. What do you understand that sentence to mean?

19 A. That as the team of people were approaching the house,  
20 that there was no drawn weapons.

21 Q. Why wouldn't you just say there were no drawn weapons?

22 A. I don't know. I mean, they were probably underneath  
23 their shirts. They weren't visible.

24 Q. In your mind, as one of the authors of this report, what  
25 is significant for memorializing that in an FBI 302?

1 A. In -- can you repeat that?

2 Q. Of course. I'll repeat any question you ever want. So  
3 you're the -- one of the co-authors of this 302.

4 A. Yes.

5 Q. And I'm trying to understand why, as one of the  
6 co-authors, you thought it was important, significant, if  
7 you'd rather use the word "significant," to include that  
8 particular sentence in your memorialization of your  
9 interactions with Robert Purbeck?

10 A. I didn't think -- I didn't think it was a  
11 misinterpretation. So I didn't ask to take it out or -- I  
12 don't exactly know.

13 Q. Let me ask you a different way.

14 A. Yeah.

15 Q. So is your testimony that that means, well, no agents  
16 had their guns out, is what we were conveying with that  
17 sentence?

18 A. Yes.

19 Q. Okay. And as one of the authors, you apparently thought  
20 that was a -- had some significance, there was some reason  
21 to include that. I'm asking what is the reason to include  
22 that in the report? What are you trying to convey?

23 A. Just that it wasn't an aggressive approach on the house  
24 maybe. That's it.

25 Q. Okay. Now, you also testified, if memory serves, that

1 you interacted with Mr. Purbeck when you first approached  
2 him in the driveway; correct?

3 A. Correct.

4 Q. All right. Did you -- let me ask you this: Are you an  
5 Atlanta-based FBI agent?

6 A. Yes.

7 Q. And so you and Agent Coffin went from Atlanta out to  
8 Boise to conduct the search; right?

9 A. Correct.

10 Q. Boise area?

11 A. Correct.

12 Q. And so most of the agents who were out there were  
13 Boise-based agents; correct?

14 A. Yes.

15 Q. You and Agent Coffin were the only Atlanta agents?

16 A. Correct.

17 Q. All right. How well do you remember the events from  
18 August 21, 2019?

19 A. I remember -- I remember them fairly well, but it was  
20 three years ago.

21 Q. Okay. When you approached Mr. Purbeck, he was in the  
22 driveway?

23 A. Yes.

24 Q. You saw him come out of the house and go to his car?

25 A. Correct.

1 Q. All right. And then you received some kind of signal to  
2 go ahead and execute the search warrant?

3 A. Correct.

4 Q. All right. Who gave that signal?

5 A. I don't know.

6 Q. All right.

7 A. It was over the radio.

8 Q. All right. And at that point you and others got out of  
9 their cars and approached Mr. Mr. Purbeck in his driveway?

10 A. Correct.

11 Q. You were one of the first ones -- one of the first law  
12 enforcement officers to reach Mr. Purbeck?

13 A. No.

14 Q. All right. Who got there first?

15 A. I don't know.

16 Q. All right. Did you walk directly from your car over to  
17 Mr. Purbeck?

18 A. I did.

19 Q. So it is just one of these situations where you just  
20 weren't the first one there, for lack of a better phrase,  
21 some other agents beat you to him?

22 A. Some other agents. Yeah.

23 Q. Arrived first?

24 A. Yes.

25 Q. Okay. But you, when you got out of your car, you saw

1 him and so you walked to him, watching him the whole time;  
2 correct?

3 A. I mean, I was looking around the house. But yes, my  
4 goal was to reach him.

5 Q. Okay. When you say you were looking around the house,  
6 you weren't inside the house, you were outside approaching  
7 him while he was on the outside; correct?

8 A. Correct.

9 Q. Okay. So, I understand maybe you looked around to see  
10 what else was happening, but your main purpose was to walk  
11 from where you were to where Mr. Purbeck was?

12 A. Yes.

13 Q. Okay. So whether you happened to glance here or glance  
14 there quickly, for the most part your attention was directed  
15 toward Mr. Purbeck?

16 A. Correct.

17 Q. All right. Because as you stated, and obviously what  
18 you were trying to do, is to make contact with him. All  
19 right. Did you see him get patted down or searched by any  
20 agents?

21 A. I did not.

22 Q. Okay. Now, when you approached him, was Agent Coffin  
23 there too?

24 A. Yes. He was in the vicinity. I don't know exactly  
25 where he was standing, but he was -- he was around.

1 Q. Who interacted with Mr. Purbeck -- between you and Agent  
2 Coffin, who interacted with Mr. Purbeck more at that initial  
3 encounter with him, you or Agent Coffin?

4 A. I don't recall. I think it was pretty even. I might  
5 have been the first one speaking.

6 Q. Do you recall Agent Coffin reaching over and laying his  
7 hand on Mr. Purbeck and saying something to the effect of,  
8 "Robert," to get his attention?

9 A. I don't recall that.

10 Q. Do you recall Agent Coffin saying anything to get  
11 Mr. Purbeck's attention?

12 A. No, I don't recall that either. No.

13 Q. From your perspective as you approached, what drew  
14 Mr. Purbeck's attention to you and Agent Coffin and the  
15 other approaching agents?

16 A. What drew our attention to him?

17 Q. From -- as you walked toward him, watching him --

18 A. Right.

19 Q. -- from your perspective, what caused Mr. Purbeck to  
20 look around and interact with you guys? Did someone say,  
21 "Hey," or, "You," or, "Mr. Purbeck," or, "Robert," or what  
22 caused him to --

23 A. Yeah, I don't recall. I mean, someone, I don't recall  
24 who, was -- had initial contact with Mr. Purbeck. And we  
25 approached, and I just said, "Hello, Mr. Purbeck, I'm Agent

1 Pinette with the FBI."

2 Q. Is that the time that you told him, hey, if you want to  
3 leave you can, but if you want to stay, we're going to have  
4 to kind of confine where you go?

5 A. Not in those words, but yes.

6 Q. Tell me the words -- to the best of your recollection,  
7 the words that you used to convey that message.

8 A. Well, on initial approach, we -- I told Mr. Purbeck who  
9 I was, that we were there with the FBI, and that we had a --  
10 that he wasn't under arrest, and that we had a search  
11 warrant for his residence.

12 Q. Okay.

13 A. And that if he was willing to talk to us, we would  
14 explain further, and that he might be in a position to offer  
15 assistance.

16 Q. So you conveyed all that to him in the driveway when you  
17 first approached?

18 A. Yes. In -- over by the front of his car. We were  
19 standing by the garage.

20 Q. I heard on direct, when you were testifying, you said  
21 something to the effect of, if he chose to stay, he was  
22 going to be kind of kept in some kind of restricted fashion.  
23 Those are my words, not yours. Something to that effect.

24 A. Correct.

25 Q. That's the part I want to hear about. To the best of

1 your recollection, what did you say with respect to that  
2 message, and where and when did you say it?

3 A. I said it as -- after the house was initially cleared  
4 and we were moving towards entering the house, was when I  
5 said that.

6 Q. And what, to your recollection, did you say  
7 specifically?

8 A. "You don't have to stay, but if you do, we're going to  
9 restrict your movement."

10 Q. Okay. So if I understand what you're saying, is you  
11 expressly told him that he's allowed to leave. Is that what  
12 you're testifying to?

13 A. I inferred that. I guess he knew that. I told him if  
14 he stayed --

15 Q. Here's -- it's -- here's what I'm trying to get at. Did  
16 you say to him, hey, you don't have to stay, your words, but  
17 if you do stay --

18 A. Right.

19 Q. -- we're going to have to kind of limit your movements,  
20 or did you only say the second part of that, if you stay,  
21 we're going to have to limit your movements? Because I've  
22 heard it -- I think I've heard it both ways from you, and  
23 maybe I am not hearing it correctly so that's why I'm asking  
24 you this question. In other words, you tell him, yeah, you  
25 can go, or did you never tell him that, you just told him,

1 if you stay, we're going to restrict your movements, and you  
2 inferred from that message --

3 A. No, I understand what you're saying. No. I said, "You  
4 don't have to stay, but if you do, we're going to restrict  
5 your movements."

6 Q. All right. So you specifically told him he didn't have  
7 to stay?

8 A. Yes.

9 Q. Okay. And in your 18 years of law enforcement training,  
10 that's a significant fact; correct?

11 A. Yes.

12 Q. We'll keep going. It's a significant fact because it  
13 would demonstrate that you weren't arresting him or  
14 detaining him or taking him into custody. It was that you  
15 had offered him a free will choice; correct?

16 A. Uh-huh (affirmative). Correct.

17 Q. Okay. Let me show you what I've marked for  
18 identification as Defendant's Exhibit 17. Do you recognize  
19 that as a copy of your 302?

20 A. Yes.

21 Q. All right. I know you read it recently, but I want to  
22 give it to you.

23 A. Okay.

24 Q. Because I'm going to ask you this question, so it's only  
25 fair for you to look and double-check me. You don't see say

1 that anywhere in your 302, do you?

2 A. No, I don't believe it's in here. No.

3 Q. Okay. And you and Agent Coffin worked on this together.

4 It's a joint -- you're the two point people out there

5 interacting with Mr. Purbeck, and you worked on this jointly

6 together to put not just your recollection but both of your

7 recollection to this 302; correct?

8 A. Correct.

9 Q. All right. And yet nowhere in this 302 is any reference  
10 to this testimony you've just given that you gave

11 Mr. Purbeck a free will choice that he can leave or he can  
12 stay; correct?

13 A. It's not in here. You're correct.

14 Q. You would agree with me that as between that point, you  
15 can leave or you can stay, and interviewing agents observed  
16 no weapons, that the you can leave or you can stay is by far  
17 more significant; right?

18 A. In this context, that is. Yes.

19 Q. If, in fact -- let me ask you this: Where would you  
20 think Mr. Purbeck was going to go? Could he get in his car  
21 and drive away?

22 A. I'm not aware. I don't know where his keys were. I  
23 mean, he was certainly allowed to. But I don't know -- if  
24 he had his keys, he could have drove away. Although we had  
25 a -- no.

1 Q. You want to correct that?

2 A. Yes.

3 Q. Okay. Go ahead. Correct it.

4 A. I believe we did have a search warrant for the vehicles  
5 as well, so he wouldn't have been able to drive away.

6 Q. I got you. That's right. So the truth is that he could  
7 not get in his vehicle and drive away; correct?

8 A. Correct.

9 Q. In fact, had he tried to do that, you would have  
10 prevented him from doing so; correct?

11 A. Correct.

12 Q. So the where would he have gone, am I right in saying  
13 that to the extent that was -- even existed, it was that he  
14 could have wandered on down the street somewhere?

15 A. Correct.

16 Q. To your recollection, am I right that you and your other  
17 agents arrived a little bit after 7:30 a.m. in the morning?

18 A. Yes. Approximately.

19 Q. I mean, you first approached and encountered Mr. Purbeck  
20 a little bit after 7:30 in the morning?

21 A. It was between 7:30 and 8:00.

22 Q. And if I understand your testimony, to your  
23 recollection, no agents had their guns drawn; correct?

24 A. Correct.

25 Q. All right. And you certainly didn't see any agents

1 point guns at Mr. Purbeck?

2 A. No.

3 Q. You're sure about that?

4 A. Yes.

5 Q. Were you wearing what I will refer to as tactical body  
6 armor or body armor or anything like that?

7 A. I had -- I believe I had soft body armor underneath my  
8 clothes. I had body armor on.

9 Q. Did you see any agents with long guns?

10 A. No.

11 Q. I use the phrase "long guns." Is that --

12 A. Yeah, I know what you're talking about.

13 Q. All right. Somebody shared sometimes that's not  
14 specific enough. All right. In the driveway, did you grab  
15 Mr. -- don't focus on grab. Put your hands on is fine, but  
16 grab Mr. Purbeck by his arm or any other part of his body?

17 A. No.

18 Q. Did you lay your hands on Mr. Purbeck?

19 A. Not then.

20 Q. Okay. When did you?

21 A. Later during the Ada County interview, I had to frisk  
22 him. That was the only time.

23 Q. That is the first time you put your hands on Mr. Purbeck  
24 was during the Ada County interview?

25 A. Yes.

1 Q. Am I correct in stating that you would not allow  
2 Mr. Purbeck -- well, first of all, do you know who Sarah  
3 Ganger is?

4 A. His girlfriend?

5 Q. Yes. Do you remember her?

6 A. I remember seeing her. Yes.

7 Q. Okay. You're aware of her presence as someone who lives  
8 in that home; correct?

9 A. Yes.

10 Q. All right. And she was present that day of the search;  
11 correct?

12 A. Yes.

13 Q. Is it accurate to say that you would not let Mr. Purbeck  
14 see Ms. Ganger?

15 A. No.

16 Q. Okay. To be more specific, from the time you first  
17 encountered Mr. Purbeck until the FBI left, did you refuse  
18 or prevent Mr. Purbeck from seeing Ms. Ganger?

19 A. No.

20 Q. Or to flip it around, take any steps or have anyone else  
21 take any steps on your behalf or anyone else's behalf to  
22 prevent Ms. Ganger from seeing Mr. Purbeck?

23 A. No.

24 Q. Are you aware or were you involved at all when the FBI  
25 agents first encountered Ms. Ganger inside the home?

1 A. No.

2 Q. So whatever happened, that's not something that's within  
3 your scope of personal knowledge?

4 A. Right.

5 Q. Did you hang on to Mr. Purbeck's arm in any form or  
6 fashion while you walked him from the driveway into the  
7 house?

8 A. No.

9 Q. Okay. Or from the house into the backyard?

10 A. No.

11 Q. So, because you already testified you only touched him  
12 when you searched him sometime later. So at no point did  
13 you grab him, guide him, or otherwise put your hands on him  
14 to usher him from the driveway to the house and the house to  
15 the backyard?

16 A. No.

17 Q. You feel like you would remember that if you had?

18 A. Yeah. I -- there was no reason to touch him. But --  
19 yeah. There was no reason to touch him. I am trying to  
20 remember the activity that was going on inside the house, if  
21 there would have been occasion to touch or guide him. But I  
22 don't believe so. I don't recall exactly as we transited  
23 the house.

24 Q. Okay. Did you say in your testimony something about it  
25 was a hybrid search? Is that what you said?

1 A. No. I don't recall that.

2 Q. High risk?

3 A. High risk.

4 Q. High risk. I'm sorry, I just didn't hear you from where  
5 I was sitting. How did that come into your knowledge?

6 A. As I approached Mr. Purbeck, the other agent who had  
7 gotten to him first said, "I conducted a high-risk search."

8 Q. To your understanding, what does that mean?

9 A. That just means a quick search of the area around your  
10 waist for weapons. It's a safety search.

11 Q. Like a frisk for weapons. A pat down.

12 A. Well, it's not a full pat down. We don't use the term  
13 "pat down," but it's just checking somebody's waist to make  
14 sure they don't have a gun or weapon that they can easily  
15 get to.

16 Q. When you -- did you and Mr. Purbeck walk outside  
17 together from inside the house to the backyard?

18 A. Yes.

19 Q. All right. Agent Coffin was with you?

20 A. He -- he was with us or very shortly after. Yes.

21 Q. So you were the one who principally went with  
22 Mr. Purbeck from inside the house to go outside the house to  
23 speak together?

24 A. Yeah. I mean, I remember us all kind of going out  
25 together, but I don't remember the exact order of who

1 stepped out first.

2 Q. Okay. Regardless, you and Mr. Purbeck and Agent Coffin  
3 went outside the home to speak with one another; correct?

4 A. Yes.

5 Q. I'm showing you what's already been introduced -- what's  
6 already been introduced as Defendant's Exhibit 5, and you  
7 can take a second and kind of orient yourself to that photo,  
8 and then I'm going to ask you a specific question, okay?

9 A. Okay.

10 THE COURT: Is there any way to remove the  
11 markings?

12 (Discussion held off record.)

13 MR. HALL: The answer is yes, Judge.

14 BY MR. HALL:

15 Q. Did you have a chance to orient yourself with it?

16 A. Yes.

17 Q. Do you recognize what's being depicted in Defendant's 5?

18 A. Yes.

19 Q. Can you tell from where you are sitting who that is  
20 right there seated outside?

21 A. I mean, I can't tell from here.

22 Q. Okay. I will show you what has been marked and  
23 introduced as Defendant's 6. Does that give you a better  
24 image?

25 A. Yes.

1 Q. I am happy -- I am happy to put it side by side for you  
2 to look at.

3 A. No, no.

4 Q. But is that essentially a closer-up view of the shot you  
5 just looked at?

6 A. Yes.

7 Q. All right. Now, do you recognize the person right  
8 there?

9 A. That kind of looks like me.

10 Q. Okay. Do you believe it is you?

11 A. Yes. That is probably me.

12 Q. Okay. Would it make sense that would be you?

13 A. Yes.

14 Q. Fair to say that the people who would be outside would  
15 be you, Agent Coffin, and Mr. Purbeck; correct?

16 A. Yes.

17 Q. And to the best of your recollection, as between the  
18 three of you, that's most likely you; correct?

19 A. Correct.

20 Q. All right. And saying that that is so, would you agree  
21 with me that at that point, you and Mr. Purbeck and Agent  
22 Coffin had moved from outside the driveway, into the house,  
23 from inside the house to the backyard, had found the chairs  
24 and set them up in the triangle fashion that you had  
25 described during your direct?

1 A. Yes.

2 Q. I mean, I can show it to you again.

3 A. No, no. Yes.

4 Q. All right. So at that point, would it be fair to say  
5 that you had begun speaking to Mr. Purbeck? You obviously  
6 don't know at what point or how far into it, but at least at  
7 that point the conversation with Mr. Purbeck had began?

8 A. Yes.

9 Q. I am going to go back to this real quick. And looking  
10 at this again, given the direction that you are facing, am I  
11 right that Mr. Purbeck would be somewhere we can't see  
12 because of the curtain but would be somewhere over in this  
13 direction where I put the X?

14 A. Yes.

15 Q. You seem doubtful. Do you think that is wrong?

16 A. No. It looks like it is probably correct.

17 Q. All right. And so because of the direction you are  
18 facing, he would be facing towards you; correct?

19 A. Well, I mean, he is not directly in front of me, but  
20 where you see him on the picture, he is a little bit off to  
21 the side. But he's over there somewhere. Yeah.

22 Q. Okay. From your recollection, were you and Agent Coffin  
23 kind of side by side and Mr. Purbeck was in front of you  
24 facing the two of you?

25 A. No, my recollection is that we were more of a triangle.

1 We were bot -- or we were all each equal distance apart.

2 Q. Okay. So you're just one -- I forget my trigonometry,  
3 but you're point of the triangle?

4 A. Correct.

5 Q. Okay. And the other points would be over -- would be  
6 over here to the right for both Agent Coffin and yourself?

7 Excuse me. Yourself is right there. Agent Coffin and  
8 Mr. Purbeck?

9 A. Well, I mean, Agent Coffin is probably right next to me.

10 Q. To your right?

11 A. Yeah. I mean, I don't see him, but I am assuming he is  
12 sitting there.

13 Q. Well, I am asking you for your recollection.

14 A. I don't recall exactly when we initially sat down where  
15 in the backyard we were. I mean --

16 Q. All right. Let me ask you --

17 A. -- you can see me there.

18 Q. Fair enough. Let me ask you a different way. So in a  
19 triangle formation, regards to this orientation, we can see  
20 where you are, Agent Coffin is somewhere else on the  
21 triangle, and then Mr. Purbeck is kind of at the other point  
22 of the triangle; correct?

23 A. Correct. Yes.

24 Q. And you would agree, from looking at that photograph and  
25 the angle that the sun was shining, that Mr. Purbeck was

1 facing the sun; correct? I can show you the photograph  
2 again if you want.

3 A. Well, I can't see Mr. Purbeck. I can speak that it was  
4 -- how it was on me.

5 Q. All right. Fair enough. How it was on you is coming  
6 back over from behind you; correct?

7 A. Kind of coming to the side, it looked like.

8 Q. All right. Mr. Purbeck was not in the shade; correct?

9 A. Oh, he could have been in the shade.

10 Q. Do you recollect him being in the shade, or are you just  
11 saying, well, I can't see him, so therefore I can't say  
12 whether he is in the sun or the shade?

13 A. What I am saying is I wouldn't have put him in the sun  
14 facing -- I wouldn't have sat him in a chair facing the sun.  
15 So he was either in the shade, or he was wasn't directly  
16 facing the sun.

17 Q. All right. Let me ask that question again. So are you  
18 saying that Mr. Purbeck was not facing the sun when you sat  
19 down and started interviewing him on the morning of August  
20 21, 2019?

21 A. I don't -- I don't recollect him sitting in the sun, his  
22 face in the sun.

23 Q. You don't recollect one way or the other?

24 A. I mean, you asked me about the photo. I just told you  
25 that I -- you can see from the photo where the sun is on me.

1 Q. Okay. Yeah. When you and Agent Coffin and Mr. Purbeck  
2 went outside to speak, Mr. Purbeck tried to sit in one chair  
3 and you directed him to a different chair; correct?

4 A. No.

5 Q. All right. Did you tell Mr. Purbeck where to sit?

6 A. No.

7 Q. Do you recall Agent Coffin telling Mr. Purbeck, when you  
8 guys first sat down or soon thereafter, that Mr. Purbeck  
9 needed to turn over his phones to the FBI?

10 A. I don't recall. I don't recall that.

11 Q. Do you understand the phones would have been within the  
12 scope of the search warrant?

13 A. I do.

14 Q. Okay. And so that would be something that the FBI, as  
15 part of the search warrant, would be seeking whether they  
16 were in the house or on Mr. Purbeck's person?

17 A. Correct. I just don't remember him asking the statement  
18 at the time.

19 Q. Okay. But you remember that statement of saying turn  
20 over your phones occurring, you're just not sure as to when  
21 it occurred?

22 A. Yeah. I can't say. I don't recall a statement -- I  
23 don't recall at that time if there was a statement made  
24 about that.

25 Q. All right. Do you recall Mr. Purbeck -- regardless of

1 the statement, do you recall Mr. Purbeck turning over his  
2 phones early during your encounter with him?

3 A. I would imagine that he did, but I don't -- I don't  
4 recall exactly when, at what point phones were turned over.

5 Q. When you did your search of Mr. Purbeck when Ada County  
6 was there and he reached in there and found the hard drive,  
7 you didn't recover any phones at that point; correct?

8 A. Correct.

9 Q. So whenever it happened, it happened prior to that  
10 search that you conducted; correct?

11 A. I would be speculating. Yes.

12 Q. Don't speculate. Do you know or not know?

13 A. I don't know.

14 Q. Am I right that Mr. Purbeck's cat ran out of the house,  
15 and Mr. Purbeck stood up to get the cat and put the cat back  
16 in the house and you told him to sit back down?

17 A. No.

18 Q. All right. And then at that point, after telling him to  
19 sit back down, you, in fact, scooped up the cat and put the  
20 cat back inside the house?

21 A. No, I never touched the cat.

22 Q. Okay. So just to break that down in two levels, number  
23 one, as I -- and look, if I get it wrong, you just tell me,  
24 hey, Mr. Hall, that's not what I said. But as I understand  
25 what you're saying, is, number one, Mr. Purbeck never stood

1 up to get the cat, one; correct?

2 A. I don't remember anything about a cat.

3 Q. Fair enough. I'll move on. You feel confident you  
4 didn't pick up the cat and put it back in the house though?

5 A. Yes.

6 Q. Whether it was in the driveway or once you got guys made  
7 your ways way to the house or made your way to the backyard,  
8 did you tell Mr. Purbeck that Ada County was on its way to  
9 interview him?

10 A. No. I think at the very end of our interview I became  
11 aware of Ada County coming there, and I think at that point  
12 we told him. It was at the conclusion of our interview.

13 Q. Had Ada County arrived by the time you told him that?

14 A. Well, I didn't -- I think they might have, because I was  
15 unaware they were coming. I was told, and I think it might  
16 have been in his presence, that Ada County was there. So.  
17 It was at the end of our interview.

18 Q. All right. And either right there or within minutes  
19 after Ada County, in fact, walked out or appear or whatever  
20 they did?

21 A. Yes.

22 Q. So prior to -- prior to that, did you ever mention Ada  
23 County in any way to Mr. Purbeck? Is that too broad? I can  
24 ask the question --

25 A. Yes.

1 Q. Sorry. That's probably not a fair question. Let me try  
2 it differently. Did you ever, in any form or fashion prior  
3 to that time when Ada County actually appeared, tell  
4 Mr. Purbeck that Ada County is on the way to see you, going  
5 to come see you, wants to interview you, will be here?  
6 Don't bog down in my verb choice, but just anything along  
7 the lines with Ada County coming out that day to interact  
8 with Mr. Purbeck?

9 A. No.

10 Q. Did you tell Mr. Purbeck anything to the effect that  
11 this -- that you were there in any kind of capacity that  
12 also involved an investigation by Ada County?

13 A. No.

14 Q. Do you know who contacted Ada County to have them come  
15 out there?

16 A. I don't.

17 Q. Were you in charge of the search, or was someone else in  
18 charge of the search?

19 A. I wasn't in charge of the search.

20 Q. Who was, to your understanding?

21 A. Well, I mean, administratively, it was the on-scene  
22 commander there would have been the Supervisor Special  
23 Agent.

24 Q. Who's that?

25 A. Doug. I can't remember his last name.

1 Q. Doug Hart?

2 A. Doug Hart. Yes.

3 Q. I don't know. I'm just asking. I know Doug is Doug  
4 Hart. Does that sound right?

5 A. Yes.

6 Q. All right. Am I right that Mr. Purbeck was kept outside  
7 from whatever point you -- excuse me, that he was kept  
8 outside in the backyard from whatever point you and Agent  
9 Coffin brought him from the driveway to the house to the  
10 backyard until the search concluded by the FBI that  
11 afternoon, with the exception of coming in for the bathroom  
12 break?

13 A. I'm sorry, could you repeat that?

14 Q. Sure. It was convoluted. Here's what I want to know.  
15 Was Mr. Purbeck in the backyard for the entire time that you  
16 guys were out there, with the exceptions of he was initially  
17 in the driveway, he was briefly in the house as you guys  
18 walked him through to go to the backyard, and maybe for a  
19 bathroom break that was taken at some point. Was he  
20 otherwise in the backyard?

21 A. He was -- for the most part, I believe he was in the  
22 backyard. I can't say after the Ada County interview where  
23 exactly Mr. Purbeck was. At that point I had come in the  
24 house and was being part of the search that was going on.  
25 So I don't know after that. But for the most part, I think

1 he was in the backyard.

2 Q. Are you the agent who turned Mr. Purbeck over to Agent  
3 Heap, Tucker Heap?

4 A. Well, I don't think there was a turnover. The Ada  
5 County interview was done, and I went back in the house and  
6 became part of the interview -- or part of search then. I  
7 don't remember exactly who ended up talking to Mr. Purbeck  
8 after that.

9 Q. Here's what I understood from your direct testimony --  
10 correct me -- is that you and Agent Coffin took, escorted,  
11 went, however you want to phrase it, with Mr. Purbeck into  
12 the backyard.

13 A. Correct.

14 Q. And you -- the two of you were there, and Mr. Purbeck  
15 was not allowed to go inside the house by himself. And so  
16 whatever phrase you want to use, you and Agent Coffin were  
17 the agents who were responsible for his movements --

18 A. Correct.

19 Q. -- and his whereabouts --

20 A. Correct.

21 Q. -- all the way through this interview. Then Ada County  
22 shows up.

23 A. Correct.

24 Q. And then you are still there --

25 A. Yes.

1 Q. -- as the FBI person on scene.

2 A. Uh-huh.

3 Q. And Ada County leaves. According to your direct  
4 testimony, there is no other FBI agent out there at that  
5 time?

6 A. No.

7 Q. Go ahead.

8 A. There was -- there was no agent participating in the  
9 interview when the interview was being conducted.

10 Q. You mean the Ada County interview?

11 A. Yes.

12 Q. Right. But you were present?

13 A. Correct.

14 Q. Right. Now we have Ada County which is -- composes of  
15 two people; right? We have the Sheriff's detective and the  
16 another person who was there.

17 A. Correct.

18 Q. And the third person was there, was you; correct?

19 A. Correct.

20 Q. Were there any other FBI agents there during that time?

21 A. Nobody was right in the vicinity where the interview was  
22 happening. It's possible that people were occasionally  
23 coming out to the backyard for air and going back in. There  
24 was a shed on the side of the house that people at some  
25 point started to look at. So there were other people at

1 points during that time in the backyard doing things.

2 Q. Fair enough. It's probably because I didn't ask a good  
3 question. But here's my point. Once Ada County left --

4 A. Yeah.

5 Q. -- and you were the only FBI agent who was really there  
6 right responsible for Mr. Purbeck, did you stay out there  
7 with him, or did you turn him over to someone else?

8 A. Well, it was either -- I in turn -- I don't know. At  
9 some -- it must have been me or somebody else. At some  
10 point there was somebody else there. I -- I don't want to  
11 speculate, but I'm remembering being asked to come back  
12 inside. So somebody had exchanged with me and started  
13 talking to Mr. Purbeck.

14 Q. Fair enough. I'll move on. Am I right that when you  
15 first walked through the house, you and/or Agent Coffin got  
16 Mr. Purbeck a cup of coffee; correct?

17 A. He got his own coffee.

18 Q. All right. But he obtained coffee; correct?

19 A. Yes.

20 Q. All right. Am I correct that the only other time he was  
21 given any liquid was when he was taken to the bathroom in  
22 the house on one occasion; is that correct?

23 A. I don't recall if it was once or twice.

24 Q. All right. Are you the one who took him to the  
25 bathroom?

1 A. I didn't -- I don't remember that. I don't recall.

2 Q. Am I right that Mr. Purbeck was never given any water?

3 A. He was offered water.

4 Q. Who offered him water?

5 A. Both Agent Coffin and I did.

6 Q. When did you offer him water?

7 A. Multiple times.

8 Q. What did he say?

9 A. He said no, he was good.

10 Q. The water that you offered him, was that the bottle of  
11 water that you and Agent Coffin were drinking?

12 A. I didn't have any water.

13 Q. Okay. You have a distinct recollection of offering  
14 Mr. Purbeck water?

15 A. Either I or Agent Coffin did multiple times.

16 Q. Fair enough. I didn't ask --

17 A. Yes.

18 Q. One or both of you, in your -- you asked -- you offered  
19 it, or Agent Coffin offered it in your presence such that  
20 you would have heard it, is what you're saying; right?

21 A. Yes.

22 Q. Did you or other FBI agents keep him away from seeing  
23 Ms. Ganger throughout the day?

24 A. No.

25 Q. Did you or Agent Coffin or other FBI agents keep

1 Mr. Purbeck from being able to speak to Ms. Ganger?

2 A. No.

3 Q. Was he allowed to go see Ms. Ganger if he wanted to?

4 A. Yes. He never asked me to. I would have let him.

5 Q. Would he have been allowed to speak to Ms. Ganger?

6 A. We would have wanted probably to be there, but yes.

7 Q. Did any kind of conversation -- and don't -- this is a  
8 paraphrase, so don't bog down in my word choice, but any  
9 kind of conversation occur when Mr. Purbeck asked whether he  
10 would be allowed to see Sarah before he went to jail or  
11 before you guys took him away or something along those  
12 lines, and the response from you or Agent Coffin was it all  
13 depended on whether Mr. Purbeck cooperated and how much he  
14 cooperated?

15 A. No.

16 Q. That never happened?

17 A. No.

18 Q. That's a bad question. You mean yes, that never  
19 happened; correct?

20 A. That never happened.

21 Q. Thank you. While you were in the backyard with  
22 Mr. Purbeck, and he was sitting out there with you and Agent  
23 Coffin, did either you ask Mr. Purbeck or hear Agent Coffin  
24 ask in your presence, whether the sun was in Mr. Purbeck's  
25 eyes and Mr. Purbeck said yes?

1 A. I don't recall anything like that.

2 Q. Okay. The same kind of idea, whether you ask was the  
3 sun in his eyes and he said yes, the sun was in his eyes,  
4 and either you or Agent Coffin or another member of the FBI,  
5 in fact, moved or had Mr. Purbeck move but placed him back  
6 in a sunny spot?

7 A. No.

8 Q. Never happened?

9 A. No.

10 Q. Do you recall an occasion where an FBI agent or  
11 employee -- don't bog down, but some FBI personnel, came  
12 outside the house and started yelling or speaking in a loud  
13 fashion or an excited fashion, and Mr. Purbeck understood  
14 the presence of where a firearm was located inside the  
15 house?

16 A. No.

17 Q. Okay. Do you recall an agent coming out and inquiring,  
18 in whatever manner or fashion, about was there a firearm  
19 present in the house?

20 A. No, I don't recall that.

21 Q. Is that the kind of thing you think you would have  
22 recalled?

23 A. I'm not sure if I would have recalled that or not. I  
24 mean, I was kind of focused on the interview, but it is  
25 certainly possible. I don't recall though.

1           THE COURT: Mr. Hall, about how much longer do you  
2 have on cross of this witness?

3           MR. HALL: It will start rolling pretty quick  
4 here. So I think we're getting ready to roll. 15, 20  
5 minutes.

6           THE COURT: We will go ahead and take a break if  
7 he's going to be at it that much longer. We've been at it  
8 two hours.

9           MR. HALL: Yes, sir.

10          THE COURT: We'll take a ten-minute recess this  
11 time.

12                   (Break from 2:50 until 3:01 p.m.)

13 BY MR. HALL:

14 Q. Agent Pinette, when we broke, I was asking you about an  
15 interaction involving a gun. If you would take a look at  
16 that 302 in front of you.

17 A. Okay.

18 Q. Page 8. Bottom of the last full paragraph on page 8, if  
19 you read the first two lines starting at, "Purbeck advised  
20 ... not be kept in his residence." You can read it to  
21 yourself, I'm sorry.

22 A. Okay.

23 Q. Did that refresh your recollection about some kind of  
24 interaction involving Mr. Purbeck and the FBI regarding the  
25 a location of a gun?

1 A. It does. But I remember your question, that somebody  
2 came out of the house and asked about a gun. This talks  
3 about a gun, but --

4 Q. That's why I was asking -- I did. My question was, do  
5 you remember an FBI agent, not you or Agent Coffin, coming  
6 out of the house and inquiring about the location of a  
7 firearm. I understood you to say no.

8 A. Correct.

9 Q. I found this reference in your 302, and I'm asking if  
10 you read it, does that refresh -- if it does, great. If it  
11 doesn't, so be it.

12 A. Yeah. No, it doesn't.

13 Q. It does not refresh your recollection?

14 A. No.

15 MR. MUND: Objection, Your Honor. He answered  
16 that.

17 THE COURT: Asked and answered. Are you ready to  
18 move on?

19 MR. HALL: Yes. I am ready to move on.

20 BY MR. HALL:

21 Q. There did come a time when Mr. Purbeck asked about an  
22 attorney; correct?

23 A. Yes.

24 Q. All right. And that happened right about the time that  
25 either you or Agent Coffin inquired about Mr. Purbeck's dark

1 market vendor name; correct?

2 A. Correct.

3 Q. And before you obtained any of the kind of information  
4 or admissions that he made about any of his online hacking  
5 activities or passwords and that kind of stuff; correct?

6 A. I know that he had talked about some of his monikers  
7 before the question of the attorney came up.

8 Q. Okay. He asked if he needed at an attorney or something  
9 to that effect; correct?

10 A. Yes. Something to that effect.

11 Q. And he also asked to use his phone to call an attorney?

12 A. No.

13 Q. He asked to use your phone or Agent Coffin's phone or  
14 some FBI agent's phone to call an attorney?

15 A. No.

16 Q. Did he ask to be allowed to use someone else's, save the  
17 FBI phones, but anyone else's phone, a land line, in any  
18 way, to be able to reach out and call for an attorney?

19 A. No.

20 Q. Did you tell Mr. Purbeck or were you present -- in the  
21 presence when Agent Coffin said something to the effect of  
22 there are simultaneous raids being conducted around the  
23 country and, quote/unquote, whomever talks first would get  
24 the best deal, or something to that effect?

25 A. No.

1 Q. It just never happened?

2 A. I don't remember that.

3 Q. Did you tell Mr. Purbeck that if he did seek an  
4 attorney, he would not get the best deal from the  
5 prosecutor, from the FBI, from the Court, however you want  
6 to phrase it?

7 A. No.

8 Q. At some point, Mr. Purbeck signed -- and I can show you  
9 just to help refresh your recollection -- an online Consent  
10 to Assume Identity form; correct?

11 A. Correct.

12 Q. Okay. That has already been introduced as Government's  
13 Exhibit 6. And that's your signature over here to the  
14 right?

15 A. Yes, it is.

16 Q. Okay. Now, after that form was signed -- or before  
17 that, at any point, did you come back -- and listen to the  
18 whole question -- first of all, if I say a Miranda form, you  
19 know what I am talking about; correct?

20 A. Yes.

21 Q. Like a standard FBI Waiver of Miranda Rights form.

22 A. Yes.

23 Q. Did you hand him a Miranda rights form and say to him  
24 something to the effect of, if you agree with this, then say  
25 yes, while holding some kind of recorder up so that he could

1 speak into the recorder?

2 A. No.

3 Q. All right. Recognizing that you are saying that no  
4 Miranda form existed --

5 A. Correct.

6 Q. -- I will preface my next question with that comment.  
7 Did you ever sign any kind of Miranda waiver form as a  
8 witness with respect to Mr. Purbeck on that date?

9 A. No.

10 Q. Again, my understanding is you said there is no Miranda  
11 form that exists, and so I want to know did the following  
12 occur, that you, Agent Pinette, looked at your watch, got  
13 the time, and then put the time on the Miranda rights waiver  
14 form?

15 A. No. I don't recall any of that.

16 Q. Is that all because you are saying no Miranda form  
17 existed in the first place?

18 A. Yes. I don't recall any of that, a Miranda form, a  
19 time, or writing anything down.

20 Q. Do you recall anything, in any form or fashion, about a  
21 Miranda rights form and Mr. Purbeck on August 21, 2019?

22 A. No.

23 Q. And do you recall, in any form or fashion, having -- you  
24 or Agent Coffin or anyone else having some kind of recorder  
25 recording some kind of exchange with Mr. Purbeck about

1 Miranda rights or about anything else that day?

2 A. Not the FBI.

3 Q. I am asking about the FBI.

4 A. No.

5 Q. You are referring to Ada County; correct?

6 A. Correct.

7 Q. We want to exclude Ada County from this conversation.

8 A. Yes.

9 Q. All right. Excluding Ada County --

10 A. Yes.

11 Q. -- anything else where you, Agent Coffin, or anyone  
12 else, in any way, recorded any kind of interaction with  
13 Mr. Purbeck?

14 A. No.

15 Q. Do you recall coming back at some point, or Agent Coffin  
16 or a different agent in your presence, coming back and  
17 seeking the passwords or pass codes for Mr. Purbeck's  
18 phones?

19 A. I remember something like that. I don't remember exact  
20 details, but I remember something about that.

21 Q. Were you involved in that, or is that just something you  
22 observed?

23 A. No, I wasn't involved in it.

24 Q. And I apologize if I asked this, but I just want to be  
25 clear. Are you the agent who took Mr. Purbeck to the

1 bathroom?

2 A. I -- I don't recall that. No.

3 Q. All right. Do you recall when -- on the occasion,  
4 whether it was you or someone else who took him to the  
5 bathroom, did he need any assistance or help in getting to  
6 the bathroom?

7 A. He didn't need assistance.

8 Q. During the time that you were interviewing Mr. Purbeck  
9 in the backyard, was he in the sun? Was he in the shade?  
10 Was he in both? What was he in?

11 A. I mean, I think at times it was both. We moved our  
12 chairs a couple of times. So as the sun moved, I believe  
13 all of us would come in and out of the shade and we would  
14 move.

15 Q. Was there an occasion where you all got -- when that  
16 happened, who moved Mr. Purbeck's chair?

17 A. He did.

18 Q. On those occasions where the chairs are being moved from  
19 sun to shade, did an occasion come where Mr. Purbeck decided  
20 he didn't want to go in the shade and decided he wanted to  
21 stay in the sun?

22 A. I remember -- I remember at one point asking if he  
23 wanted to move and he said no, he was good. I don't know  
24 whether he was in the sun or not at that point.

25 Q. After Ada County left and -- did you come back out and

1     conduct a search of Mr. Purbeck in which you obtained his  
2     wallet?

3     A.   No.

4     Q.   Did you ever search Mr. Purbeck's wallet and found a  
5     BitPay card inside the wallet?

6     A.   No.

7     Q.   If that had occurred, would you have remembered it, you  
8     believe?

9     A.   Oh, yeah.

10    Q.   Did you actually participate in the search, or were you  
11    mostly involved with Agent Coffin sitting outside and  
12    interviewing Mr. Purbeck?

13    A.   Correct. I was not heavily involved in the search.

14    Q.   Okay. Your main goal, along with Agent Coffin, was to  
15    interview Mr. Purbeck once he indicated he wanted to talk to  
16    you. That's kind of what maintained your focus?

17    A.   Correct.

18    Q.   Toward the end of the -- let me ask you this: When Ada  
19    County showed up, is that the conclusion of the interview  
20    that the FBI was conducting with Mr. Purbeck, or did that  
21    interview continue after Ada County left?

22    A.   No, that was the conclusion and then -- and then Ada  
23    County. It was nothing after that.

24    Q.   So about the time that Ada County showed up was about  
25    the time you were wrapping up the interview?

1 A. Correct.

2 Q. And then how -- approximately, to the best of your  
3 recollection, how long after Ada County left did the FBI  
4 wrap up and leave?

5 A. I am not sure. An hour maybe. But that would be a  
6 guess.

7 Q. Prior to leaving, did you receive a phone call from a  
8 prosecutor or anyone else indicating to you that Mr. Purbeck  
9 was not to be detained? Later in the day, towards the end  
10 of the day at some point, did you receive some phone call  
11 saying don't arrest him or he's not to be detained or  
12 released or however you want to phrase it?

13 A. No.

14 Q. Does any of that sound familiar?

15 A. I did not receive any phone calls.

16 Q. Okay. I think my last question, and then I will check  
17 my notes, is, that phone call that was played during direct?

18 A. Yes.

19 Q. All right. There was a prior phone call that  
20 Mr. Purbeck made to you as well regarding some stolen  
21 property?

22 A. That was a subsequent phone call.

23 Q. So this was the first phone call.

24 A. Correct.

25 Q. And the stolen coins was the subsequent phone call?

1 A. Correct.

2 Q. Okay. At that time, was Mr. Purbeck represented by  
3 counsel?

4 A. No.

5 Q. Okay. Did you reach back out to Mr. Purbeck?

6 A. Yes.

7 Q. In response to those calls?

8 A. Yes.

9 MR. HALL: If I could have one quick second?

10 THE COURT: Yes, sir.

11 MR. HALL: Thank you. That's all my questions,  
12 Judge.

13 THE COURT: All right. Any redirect?

14 MR. MUND: No, Your Honor.

15 THE COURT: All right. Agent, you may step down.

16 Does that conclude the government's evidence,  
17 Mr. Herskowitz?

18 MR. HERSKOWITZ: It does. We rest, Your Honor.

19 THE COURT: Okay. Mr. Hall?

20 MR. HALL: Yes, we call Agent Harshbarger.

21 THE COURT: Let me discuss with you timing-wise,  
22 because we need to let our CSOs know how late we think we're  
23 going. It's 3:15 right now.

24 MR. HALL: Yes, sir.

25 THE COURT: Do you have an idea about whether

1 you'll complete your evidence this afternoon or we'll need  
2 to come back tomorrow?

3 MR. HALL: Yes, sir. I think unfortunately we'll  
4 have to come back tomorrow. I'll tell you, just to give you  
5 a flavor of it, I will call Agent Harshbarger. I told the  
6 Government all of this. So Agent Harshbarger, he'll be a  
7 lot shorter than both of these witnesses who are the  
8 principal witnesses in the case, but he'll be -- I will  
9 question him about many of the same topics we have just  
10 heard to get his perspective on it.

11 I will question Agent Tucker Heap, and I -- he  
12 will be, I think, very short, because I think he is involved  
13 in a very discrete portion of the case that I am going to  
14 ask him about. I'll probably ask him preliminary questions,  
15 then get to the heart of the matter. So I'd expect him to  
16 be very short. Now, I'm holding the Government, from some  
17 conversations, I believe the cross-examinations will be  
18 pretty short for both of them.

19 I have Detective Ryan Pacheco, the Ada County  
20 Sheriff's Office. He is under subpoena. We have all agreed  
21 that he can appear by Zoom. Ms. Zarkowsky has kindly set  
22 that up by Zoom.

23 I would very much like to get Agent Harshbarger  
24 and Heap up and out, because they flew in and, if possible,  
25 I would like to get Detective Pacheco done because he has

1       been on standby for Zoom. I then have, potentially,  
2       Ms. Sarah Ganger. I have potentially, if the -- if  
3       Mr. Purbeck chooses to testify. Then of course I have  
4       Dr. Allen.

5               So I think those are the matters I think that will  
6       carry us over and require a second day. I am happy to do  
7       whatever the Court wants, but I understand there are many  
8       moving pieces and parts here, and I am just wanting to tell  
9       you that is kind of what I see. And I am happy to answer  
10      any questions the Court has.

11             THE COURT: Okay. For the benefit of the building  
12      and the CSOs, they need to be out of here by 5 o'clock if we  
13      know we are coming back. If we thought we could finish  
14      something by 5:30, 6 o'clock, we can make arrangements to  
15      stay longer. But if we know we'll be out of here by 5, then  
16      I would like to conclude the matters in time for the CSOs to  
17      close the building at 5 o'clock.

18             MR. HALL: Yes, sir.

19             THE COURT: Does that work?

20             MR. HALL: Yes, sir.

21             THE COURT: If we can get these three done this  
22      afternoon in the time we have then.

23             MR. HALL: Yes, sir.

24             THE COURT: Mr. Herskowitz?

25             MR. HERSKOWITZ: That is fine. I agree.

1 THE COURT: Okay. All right. Call your witness.

2 MR. SISTLA: Your Honor, just one more thing. We  
3 inquired with your deputy if we could start at 9:30 tomorrow  
4 morning. Would that be okay with the Court?

5 THE COURT: That's fine. That will be fine.

6 Come forward, sir, to the witness stand and just  
7 remain standing and take the oath, please.

8 Sp. Agt. Clark Harshbarger

9 Sworn

10 THE CLERK: Please be seated and state and spell  
11 your name for the record.

12 THE WITNESS: Clark Harshbarger, C-l-a-r-k  
13 H-a-r-s-h-b-a-r-g-e-r.

14 THE COURT: You can have a set.

15 THE WITNESS: Thank you.

16 Direct Examination

17 BY MR. HALL:

18 Q. Good afternoon, Agent Harshbarger. Before we get  
19 started, I am Andrew Hall. We met briefly in the hallway.  
20 I represent Mr. Purbeck. I'm going to have some questions  
21 for you. I understand that you are retired. I plan to  
22 refer to you as Agent Harshbarger given we are talking about  
23 times that -- unless that is not going to be acceptable to  
24 you.

25 A. That is fine. I am not retired, I am resigned,

1 technically.

2 Q. Okay. I wasn't going to quibble. I don't know what the  
3 status was. I just didn't want to -- if for some reason you  
4 don't want to be referred to as Agent, I wanted to respect  
5 your preference.

6 A. Appreciate that.

7 Q. Do you prefer Mr. Harshbarger?

8 A. Mr. Harshbarger is probably more accurate.

9 Q. Let's go with that then, yes, sir. Okay.

10 Mr. Harshbarger, will you give the Court, and it can be in  
11 brief summary form, a little bit of background about your  
12 law enforcement history as relates to being involved in the  
13 FBI, period?

14 A. Certainly. I joined the FBI in 2003. Served in  
15 Anchorage, Alaska, in Kiev, Ukraine, and Washington, D.C.,  
16 and my last location was in Boise, Idaho out of the Salt  
17 Lake City Division.

18 Q. How long were you in the Boise, Idaho office,  
19 approximately?

20 A. As an FBI -- so I've been in Boise, Idaho since 2013.  
21 So I left in 2020. So approximately seven years in the  
22 Boise, Idaho resident agency as a Special Agent with the  
23 FBI.

24 Q. All right. Yes, sir. And in your capacity as a Special  
25 Agent with the FBI out of Boise, did you become involved

1 with the search warrant being executed at the house of  
2 Robert Purbeck?

3 A. Yes.

4 Q. All right. I can refresh your recollection with  
5 addresses and stuff, but is it sufficient for our purposes  
6 to refer to it as Mr. Purbeck's residence, or do you need a  
7 more specific address?

8 A. It is sufficient to refer to it as Mr. Purbeck's  
9 residence.

10 Q. Okay. How is your recollection of the events regarding  
11 that search?

12 A. I recollect some of the things from that search,  
13 certainly.

14 Q. Fair enough. Tell us, when you first arrive, were you  
15 part of the FBI agents who arrived at the beginning of the  
16 search?

17 A. Yes.

18 Q. Okay. And did you have a specific role?

19 A. I was the search team leader.

20 Q. And in brief terms, what does that mean?

21 A. That means that I organize the evidence that is seized,  
22 and document it after the fact.

23 Q. All right. And you were there with other FBI agents as  
24 well as FBI personnel who are not agents. Is that accurate?

25 A. That's accurate.

1 Q. A quick side question, are you familiar with Nicole  
2 Hideman?

3 A. Yes.

4 Q. Is she an agent or a non-agent?

5 A. She is not an agent.

6 Q. What is or was her capacity back in August of 2019?

7 A. I am not certain.

8 Q. Photographer?

9 A. That's not her official position within the FBI. That  
10 may have been her role at the search.

11 Q. Yes, sir. All right. How were you dressed that day?

12 A. I don't recall.

13 Q. Without getting into all the minutia of how one conducts  
14 a search warrant, were you one of the first agents through  
15 the front door?

16 A. Yes.

17 Q. All right. Were you the point person or not sure?

18 A. I would have been number one or two.

19 Q. Okay.

20 A. I don't recall.

21 Q. Were you wearing -- if I use the wrong phrase, you  
22 correct me, but, you know, body armor, tactical gear,  
23 something along those lines?

24 A. Well, I would not have been dressed like this.

25 Q. Yes, sir.

1 A. I would have been wearing typical like BTU-style  
2 clothing.

3 Q. Is that like SWAT Team gear or?

4 A. Different. Like that style of clothing, but not the  
5 appearance that would be SWAT Team. Yeah. Comfortable  
6 pants that you would wear that would have cargo pockets, a  
7 belt.

8 Q. Okay. And some kind of --

9 A. A polo shirt probably.

10 Q. Okay. And then ballistic vest of some variety?

11 A. Yes. Anytime we are making an entry into an unknown  
12 residence, we would wear ballistic vests. In cases where it  
13 is low threat, traditionally I would wear something under a  
14 shirt. So undercover-type armor is what I would refer to it  
15 as.

16 Q. Do you remember on that particular day which way you had  
17 gone?

18 A. No. But from my experience, I would, for this type of a  
19 search, very -- yes. I would likely have been wearing  
20 undercover armor.

21 Q. Okay. Helmet?

22 A. No.

23 Q. I don't know the right word, but shield?

24 A. No.

25 Q. When I say a shield, like one of those entry shields?

1 A. No.

2 Q. Nothing like that?

3 A. I know what you are talking about. No.

4 Q. Okay. Were you armed?

5 A. Yes.

6 Q. Did you have a -- if I don't use the right lingo, fix  
7 me. But was it a handgun, a long gun? What kind of weapons  
8 did you have?

9 A. I would have had my duty pistol, which was a Glock 22,  
10 which was my issue pistol. Next to where I wear my pistol  
11 would have been my FBI badge. That was my standard  
12 configuration.

13 Q. Okay. When you approached the house, was your gun drawn  
14 or holstered?

15 A. I don't recall.

16 Q. All right. How many agents would have made up the  
17 search team? Approximately? Approximately is fine.

18 A. Approximately 8 to 10.

19 Q. And would any of them, would they have -- were they all  
20 dressed similar to the way you just described for the Court,  
21 or would they have had other kinds of body armor or tactical  
22 gear or helmets or shields or anything along those lines?

23 A. They would have been dressed similarly to me. I don't  
24 believe anybody had a helmet. That is another level of  
25 entry.

1 Q. Yes, sir. How about any of them having weapons out? Do  
2 you recall any of them having their weapons drawn when they  
3 approached the house or went in the house? Anything along  
4 those lines?

5 A. I don't recall. We -- as law enforcement officers, when  
6 you are initially making entrance into a location, it would  
7 be standard operating procedure to have your gun drawn,  
8 typically in a depressed manner.

9 Q. By "depressed manner," do you mean lowered?

10 A. Yes, not pointing straight out in front of you.

11 Q. Okay. Do you recollect -- I guess you arrived in some  
12 kind of vehicle?

13 A. Yes.

14 Q. All right. Obviously. And do you recall -- I guess my  
15 question will be: From the time you left that vehicle till  
16 you made the approach, do you remember anyone coming out of  
17 the house?

18 A. Yes.

19 Q. What do you recall?

20 A. Mr. Purbeck came out of the house and walked towards the  
21 driver side of his car, which was parked in the driveway.

22 Q. All right. What did you see insofar as involved FBI  
23 agents approaching Mr. Purbeck and interacting with him?

24 A. At least two FBI agents approached Mr. Purbeck and began  
25 a conversation with him, let him know that -- I continued

1 on, but I heard them admonish him that we were the FBI, had  
2 a search warrant, and then I was towards the house.

3 Q. Did you have any -- did you see anyone patting  
4 Mr. Purbeck down or searching him or anything along those  
5 lines?

6 A. No.

7 Q. Am I right that -- if I am not, you, by all means,  
8 correct me, but am I right that you entered the house,  
9 whether one or two, and you were either the first FBI agent  
10 or one of the first FBI agents to encounter Ms. Sarah Ganger  
11 inside the house?

12 A. I don't recall if I was one of the first, but I did  
13 encounter Ms. Ganger inside the house.

14 Q. All right. Do you recall where you guys found  
15 Ms. Ganger?

16 A. So, yes.

17 Q. Where?

18 A. We made entry into the house, and initially it was  
19 pretty overwhelming because of how much stuff and the smell.  
20 There was a doorway on the right that led to two bedrooms  
21 and a bathroom, and Ms. Ganger was in one of those bedrooms.

22 Q. Was she asleep?

23 A. She was on the bed, as I recall. I don't -- I don't  
24 recall if she was asleep.

25 Q. In a state of undress?

1 A. In a state of less dress.

2 Q. Okay. And did you or any other FBI agents point your  
3 gun at her and say -- I won't pick up on the word, but, you  
4 know, "freeze" or "stop" or "don't move" or anything along  
5 those lines?

6 A. I don't recall.

7 Q. Okay. Tell us, in brief terms, after encountering  
8 Ms. Ganger, what did you and the other FBI agents who made  
9 entry into the house do?

10 A. What I recall, as she was a female, we had a female  
11 agent make sure that she didn't have any weapons on her and  
12 help gather some clothing so that we could get Ms. Ganger  
13 into a state of more dress while the rest of us continued to  
14 clear the location.

15 Q. How long you think it took, approximately, to clear the  
16 location?

17 A. To clear the location? Because of the level of stuff,  
18 it took significantly longer than it would have if it was  
19 the same size house without all of the stuff.

20 Q. And to your recollection, how long was that?

21 A. I don't -- I don't have an idea. I would have to  
22 speculate.

23 Q. Don't speculate. But can you ballpark it?

24 A. Not comfortably.

25 Q. Okay. Fair enough. How long are the standard -- how

1 many times have you done entries into houses?

2 A. Hundreds.

3 Q. Okay. So you have a pretty good sense, recognizing that  
4 whatever you encounter may change that, as to how long it  
5 takes to clear a particular house?

6 A. Yes. Right.

7 Q. Again, kind of an over/under, but for what you  
8 encountered at Mr. Purbeck's house, what is, in your past  
9 specious experience, has it been to clear a house of that  
10 size?

11 A. Of that size, to do primary clears, which is where we  
12 make sure there is no individuals or people that could hurt  
13 us, and then secondary clears to make sure there are no  
14 hiding spots that we might have missed, total time for a  
15 house like that would have been less than 20 minutes.

16 Q. Okay. And while I understand -- I don't want you to  
17 speculate, and you can ballpark it, please tell us whether  
18 or not, to clear Mr. Purbeck's house, because of the  
19 conditions you encountered, was more than 20 minutes or less  
20 than 20 minutes?

21 A. Significantly more.

22 Q. Than 20 minutes?

23 A. Yes.

24 Q. Once you cleared the home, what was your role, or what  
25 did you do next?

1 A. I was part of the search team, searching locations, but  
2 also administratively labeling rooms, for example, so that  
3 we could classify where evidence was taken from. And then  
4 as items were identified, making sure that we had  
5 photographs, all of the administrative procedures for  
6 entering -- making them so we could enter them into evidence  
7 for the FBI.

8 Q. Did you have any interactions -- I'm going to break it  
9 down into phases. Did you have any interactions with Mr.  
10 Purbeck while he was outside in the driveway of his home?

11 A. I don't recall any interactions with Mr. Purbeck out  
12 there.

13 Q. All right. And then at some point, did it come into  
14 your knowledge that Mr. Purbeck was outside in the backyard?

15 A. Yes.

16 Q. Were you involved at all in the process of getting him  
17 from the driveway to the backyard?

18 A. My recollection is that he came through the house. So I  
19 wasn't involved, but I observed that he came in with the two  
20 agents, was allowed to refill his coffee cup. I recall them  
21 asking if he needed to use the restroom before going out.  
22 Other than that, could see through the glass door that was  
23 in the backyard from there on. But no direct interaction,  
24 just observations.

25 Q. All right. Did you see -- when you saw Mr. Purbeck

1 coming through from the driveway through the house to the  
2 backyard, did you see any of the agents kind of ushering him  
3 or hanging on to him or any kind of contact to help escort  
4 him out to the backyard?

5 A. I don't recall seeing that.

6 Q. Okay. With respect to his time in the backyard, were  
7 you out there involved in any of the questioning or  
8 interviewing?

9 A. No.

10 Q. Did you see how the -- from what you saw, who was  
11 outside with Mr. Purbeck?

12 A. For most of the time, the two agents who encountered him  
13 in the driveway, Mr. Pinette, or Special Agent Pinette, and  
14 Special Agent Coffin.

15 Q. Okay. The Atlanta agents?

16 A. Correct.

17 Q. All right. And did you see where they were sitting in  
18 the backyard?

19 A. Yes.

20 Q. Were they in the sun, shade, or where?

21 A. So there were some significantly tall trees back there  
22 as well as the house and the patio. So Mr. Purbeck was in  
23 the shade. Obviously the sun moves through the day, so at  
24 various times I saw them change orientation, I presumed to  
25 keep him comfortable. The only person that I saw in the sun

1 on occasion was Agent Pinette.

2 Q. Did you ever see Mr. Purbeck in the sun?

3 A. No.

4 Q. At some point in the search of the house, did it come to  
5 your attention or -- either directly because you saw it or  
6 the attention of one of your other agents, anything to do  
7 with a possible firearm being in the house?

8 A. I don't recall.

9 Q. Okay. Just to expand on that a little bit, it may not  
10 have been the firearm itself, but a box or something that  
11 would lead someone to inquire as to whether a firearm was,  
12 in fact, in the house.

13 A. I don't recall.

14 Q. Do you recall any occasion where you or any other agents  
15 asked Mr. Purbeck in any manner whatsoever about the  
16 presence of a firearm?

17 A. I don't recall that, but it would be standard.

18 Q. At what would that conversation have taken place?

19 A. It could happen at any point. Typically it would be at  
20 the beginning, just so that we could make safe any weapons  
21 that were out in the open and not secured.

22 Q. Do you remember any details about that, or you're just  
23 saying --

24 A. That's just standard.

25 Q. Okay.

1 A. I don't recall that at all in this case.

2 Q. Yes, sir. Were you involved at all in bringing  
3 Mr. Purbeck inside to use the bathroom or for any other  
4 reason?

5 A. No.

6 Q. Okay.

7 A. I observed that happen, but I didn't directly  
8 participate.

9 Q. Okay. When you saw that happen, was he escorted or  
10 unescorted?

11 A. An agent would have been nearby. But so if -- that, I  
12 would call escorted, but not controlled or held.

13 Q. Okay. That was going to be my next question. You  
14 see -- when he came inside from the outside, he came in with  
15 an agent, it sounds like?

16 A. Yes.

17 Q. Okay. And then my question is, is that agent, who is  
18 going with him, did that agent have his hand on Mr. Purbeck  
19 in any form or fashion, to your recollection?

20 A. I don't recall that.

21 Q. Were you involved in any way in searching Mr. Purbeck at  
22 any point?

23 A. No.

24 Q. Okay. I don't want to bog down in the search, that may  
25 be my bad question. Frisk him, pat him down, anything?

1 A. No.

2 Q. Did you observe anyone else searching him, patting him  
3 doing, or anything along those lines?

4 A. I didn't observe that. No.

5 Q. All right. Did you have any occasion where you actually  
6 spoke with Mr. Purbeck, other than possibly initially when  
7 you were asking, whether it was you who was asking him about  
8 a firearm, but were there any other conversations during the  
9 course of the day that you had with Mr. Purbeck?

10 A. Not to my recollection.

11 Q. All right. I'm going to ask you specifically about  
12 this. Did you have any questions involving Mr. Purbeck in  
13 obtaining passwords or pass codes from a phone or phones  
14 that were attributed to him?

15 A. I don't recall that.

16 Q. Okay. Any recollection of interacting with Mr. Purbeck  
17 when he came into the house to go to the bathroom, whether  
18 it was about passwords or pass codes or for any other  
19 reason?

20 A. I don't recall.

21 Q. At the end of the day, were you one of the last -- did  
22 you stay there the whole day?

23 A. Yes.

24 Q. Okay. And at the end of the day, did you interact with  
25 Mr. Purbeck at all?

1 A. I would have been one of the last agents there. I don't  
2 recall interacting with Mr. Purbeck, but as I was the search  
3 team leader, I fill out the search documents, which includes  
4 an inventory of the items that we seized. I don't recall if  
5 I handed that directly to Mr. Purbeck or if it was some  
6 other capacity that I gave it to somebody else.

7 Q. Yes, sir. I want to show you on the ELMO what's already  
8 been introduced as Defense Exhibit 14. It may be too hard  
9 for you to see. If that's the case, I'm going to pick it up  
10 and bring it up to you see you can see it.

11 A. It is not particularly clear, but this looks like an FD  
12 597 receipt.

13 Q. All right. And whose name is down there at the bottom,  
14 if you can see, and if not, I am happy to bring it up to  
15 you.

16 A. I can see my name there on one, two, three, four -- four  
17 of the pages.

18 Q. All right. And would you have shown that to Mr. Purbeck  
19 and have him sign it?

20 A. Yes. That would be the typical process unless he is  
21 unavailable, and then somebody who has authority, that  
22 there's other ways we can handle that. But typically I  
23 would hand it directly to Mr. Purbeck and ask him to sign.

24 Q. Is that what happened in this case?

25 A. It appears so, because I can see a signature with

1 Mr. Purbeck's name there.

2 Q. Okay. Are you, as the search team leader, the person  
3 who's responsible for having the search warrant with you?

4 A. Yes.

5 Q. Okay. And at least the front page of the search warrant  
6 is reflected in Defendant's 14 as well?

7 A. Yes. It appears so.

8 Q. Okay. Once you had those documents signed and then  
9 photographed, what happened to them?

10 MR. HERSKOWITZ: Judge, I'm going to object to  
11 outside the scope of the hearing at this point as to these  
12 questions.

13 THE COURT: Sustained.

14 MR. HALL: All right. That is fine. I think that  
15 is right. I apologize, Your Honor. I withdraw the  
16 question. It's sustained, but I'll move on.

17 BY MR. HALL:

18 Q. After you signed those documents, did you do anything  
19 else with respect to the house?

20 A. I don't recall.

21 Q. Okay. Other than what we've described or talked about  
22 today -- well, let me say that differently. Other than your  
23 involvement on August 21 of 2019, have you had any other  
24 involvement in this case?

25 A. Yes.

1 Q. Okay. Don't answer the rest of it yet. Did any of that  
2 involve the interviews or interactions with Mr. Purbeck --  
3 between Mr. Purbeck and the FBI on August 21, 2019?

4 A. Possibly.

5 Q. Let me ask it a different way. Other than the questions  
6 I have just asked you, on August 21, 2019, did you have any  
7 other interactions or conversations with Mr. Purbeck, or  
8 have we covered all of that?

9 A. We have covered it all.

10 MR. HALL: Okay. If I can have one second, Judge.

11 THE COURT: Yes.

12 BY MR. HALL:

13 Q. Going back to the search, did you ask or otherwise  
14 obtain the keys to Mr. Purbeck's car on August 21, 2019?

15 A. I don't recall that.

16 Q. Okay. Do you recall their cars being there?

17 A. I recall at least one car being there.

18 Q. You have no recollection about either asking for or  
19 otherwise obtaining the keys to any cars?

20 A. No. I mean, that would be standard again, but I don't  
21 recall that at all in this case.

22 Q. Okay. Did you or -- please tell us whether or not you  
23 brought any iPhones out from any kind of sealed or unsealed  
24 evidence bag to try to enter the passwords or pass codes to  
25 enter into the phones in some kind -- and showing them to

1 Mr. Purbeck or anything along those lines? Does that jog?

2 A. I don't recall.

3 Q. All right. And did you ever inquire of Mr. Purbeck  
4 anything about any kind of -- here is the question I'll ask  
5 you, were you ever in a situation where you had your phone  
6 or another phone, that you were using, where you were trying  
7 to get a pass code or password from Mr. Purbeck to enter it  
8 to access some kind of Proton Mail account some other  
9 account?

10 A. No.

11 Q. And do you know which agent escorted Mr. Purbeck to the  
12 bathroom?

13 A. No.

14 MR. HALL: All right.

15 THE COURT: Any cross-examination?

16 MR. HERSKOWITZ: No questions. Thank you, sir.

17 THE COURT: May Mr. Harshbarger be excused?

18 MR. HALL: Yes.

19 THE COURT: Mr. Harshbarger, you are excused, sir.  
20 Call your next witness, Mr. Hall.

21 MR. HALL: We call Agent Heap. I will go get him.

22 Agent Heap

23 Sworn

24 Direct Examination

25 BY MR. HALL:

1 Q. Agent Heap, where are you -- well, first of all, I am  
2 Andrew Hall again. Good afternoon.

3 A. Pleasure to meet you.

4 Q. Where are you employed?

5 A. I am employed as an FBI agent in Boise, Idaho.

6 Q. How long have you been employed with the FBI?

7 A. A little over 16 years.

8 Q. How long have you been in law enforcement?

9 A. The same time.

10 Q. How long have you been based out in Boise?

11 A. I first came out to Boise to work as an agent in  
12 February of 2017.

13 Q. And were you -- sounds like you were in the Boise office  
14 in August of 2019?

15 A. I was.

16 Q. Do you remember being involved in a search of a house in  
17 Meridian, Idaho, belonging to Mr. Robert Purbeck?

18 A. I do.

19 Q. And how well do you recall the events of that day?

20 A. Pretty well. I have tried -- since I knew I was coming  
21 to testify, I have tried to recall some different things  
22 from that day. I -- I think I recall them pretty well.

23 Q. What was your role or roles with the FBI on that day  
24 with respect to the search of Mr. Purbeck's house?

25 A. My role was to act as one of the members of the entry

1 team to clear the house and help with the search warrant.

2 Q. How were you dressed?

3 A. I was dressed in -- I was dressed in civilian clothes,  
4 Levis and T-shirt, I remember, with a Kevlar vest and Array  
5 jacket over the top of it that was blue that had letters in  
6 yellow with FBI on it.

7 Q. Were you armed?

8 A. I was.

9 Q. What kind of gun?

10 A. At the time, we just switched over, I believe I still  
11 carrying my Glock 22, which was a 40 caliber.

12 Q. So a handgun?

13 A. A handgun, correct.

14 Q. Did you have a long gun with you?

15 A. I did not.

16 Q. Only the handgun?

17 A. Correct.

18 Q. All right. Other members of the entry team, were  
19 they -- how were they attired? Similarly or differently?

20 A. Yes. Some may not have had like the FBI jacket I had.  
21 I know others did. Some just use -- they have their Kevlar  
22 vest with like FBI identifying letters on the front, and so  
23 it was a mix of that. Like they all had identifying  
24 markings on them with the Kevlar vest on.

25 Q. Any long guns or all handguns?

1 A. Not that I recall. I think everything was handguns.

2 Q. As part of the entry team, are you toward the front, in  
3 the middle, toward the back? Where do you fall?

4 A. I remember I was more in the middle. There was -- I  
5 can't remember -- there was one to two agents ahead of me, I  
6 believe. If I recall directly, my boss, Doug Hart, was  
7 ahead of me.

8 Q. Okay.

9 A. Near the door when we approached the door.

10 Q. When you first got out of your vehicle that you arrived  
11 in, had you seen anyone leave the residence to walk out  
12 towards the driveway?

13 A. I don't recall that, but I know someone did because we  
14 got our calls to approach the house. I don't recall seeing  
15 anybody come out into the driveway.

16 Q. Out into the driveway, you mean?

17 A. Yes.

18 Q. Okay. When you approached the house, did you see  
19 someone in the driveway?

20 A. Very quickly, an agent that was with me named Ryan  
21 O'Neil dealt with someone who we thought at the time was the  
22 subject, and I just proceeded to the door. I didn't have  
23 any dealings with who he believed who that was.

24 Q. Okay. Do you recall anything about those interactions  
25 or not?

1 A. Nothing. No. He went and confronted this person. I  
2 went straight to the door.

3 Q. Okay. Do you know whether he grabbed him or didn't grab  
4 him, or do you not even know whether or not --

5 A. No, my back was turned.

6 Q. Got it. When you went into the house, was your gun  
7 holstered or drawn?

8 A. It was drawn.

9 Q. All right. Was it pointed up or pointed down?

10 A. I had it what we call at the ready. I had it pointed  
11 down, because you don't want to cross your muzzle at  
12 somebody. So it was down, but it was definitely out of its  
13 holster.

14 Q. Okay. With respect to other members of the entry team,  
15 were they also -- similarly had their weapons out?

16 A. Yes, I believe so.

17 Q. And what is the ballpark number on the entry team?

18 A. I would say five to six.

19 Q. Okay. Agent O'Neil, the one who peeled off, would he  
20 have had his weapon out as well?

21 A. I don't recall. I don't recall.

22 Q. Okay. Do you recall, other than the entry team, whether  
23 any other agents had their weapons out?

24 A. Yes, I remember seeing -- I can't remember who, but I  
25 know other people had their weapons out.

1 Q. Okay. Are you familiar with the two Atlanta-based  
2 agents who came out, Agents Coffin and Pinette?

3 A. Yes.

4 Q. Did they have their weapons out?

5 A. I don't recall.

6 Q. Upon entry into the house, tell us what you did.

7 A. Well, usually, per our training, we go in and we split  
8 off in like teams of two to go clear rooms. And that is  
9 what we did. There was -- I remember when we came in, Doug  
10 and another agent went to the right where we -- there was --  
11 we believe there was a bedroom there, because there was a  
12 woman calling to us when we came through the door through  
13 the front window. And so when we went through the front  
14 door, they went to the right, and we went to the left where  
15 there was a couple of bedrooms in there.

16 Q. Did you --

17 A. And the kitchen was in front of us.

18 Q. I sorry, I interrupted you.

19 A. The kitchen was in front of us. So the kitchen,  
20 bedroom, and then a couple -- the living room was right  
21 out -- as you went through the front door, you were  
22 immediately in the living room and then you went to the left  
23 and there was a couple of bedrooms.

24 Q. When you entered the house, were you guys yelling out  
25 stuff like "FBI," "police, police," or anything along those

1 lines?

2 A. Yes, "FBI, search warrant."

3 Q. All right. And how -- give me a volume sense, was it  
4 loud, quiet, like a calm voice, or was it designed to  
5 project? Give me a sense of it.

6 A. It was loud. It's meant to project and let people know  
7 that we're there, for their safety and for ours, just to let  
8 them know we're in the louse.

9 Q. Okay. Is that when you -- the FBI team hits the -- goes  
10 through the front door, or is it when you're first making  
11 the approach all the way up, you're yelling that out?

12 A. It was right from the initial part. It's called  
13 knocking and announcing.

14 Q. Okay. With respect to when Agent O'Neil peeled off to  
15 go deal with the person in the driveway, was he also yelling  
16 out who he was?

17 A. I don't recall if he identified himself.

18 Q. Okay. Were you one of the agents who encountered a  
19 person by the name of Ms. Sarah Ganger in the home?

20 A. I don't remember her name, but I -- we encountered  
21 someone who we believe was the defendant's girlfriend.

22 Q. Okay. Fair enough on the name. But you encountered a  
23 female who you believed to be Mr. Purbeck's girlfriend?

24 A. Yes.

25 Q. Okay. And were you the one who encountered her, or you

1 just know some of your other fellow agents did?

2 A. First encounter was some other agents.

3 Q. Okay.

4 A. She was -- I believe that they encountered her somewhere  
5 near the bedroom after we went left to go to the other two  
6 bedrooms to our left. Later I encountered her but not  
7 initially.

8 Q. Okay. Were you able to see in the bedroom and see  
9 whether the agents who were going in there had their guns  
10 drawn or not drawn, or do you not know?

11 A. I do not know.

12 Q. All right. During this time, when you were going  
13 through the house, was your gun still out?

14 A. Yes.

15 Q. Okay. And the other search team members that you could  
16 see, were their guns still out?

17 A. Yes.

18 Q. All right. Is that pretty much standard operating  
19 procedure for going through a house?

20 A. Yes.

21 Q. And to use a colloquialism, is this what is known as  
22 clearing the house?

23 A. Correct.

24 Q. All right. Following the FBI's clearing of the house,  
25 what was your role?

1 A. I was designated as a member of the search team, and so  
2 we went out of the house, and what we do at that point is we  
3 have a photographer and someone who is logging the  
4 photographer's photo by photo, like literally numbering  
5 them, and they go through and they put a letter in every  
6 room on the house, take a picture of how the state of the  
7 house at the time of the -- as we are about to begin the  
8 search warrant. So if there's -- if we say we -- you know,  
9 if we had destroyed something or there was some damage, we  
10 could show the before and after. And so it's to preserve  
11 the search scene at the time that we began the search  
12 warrant.

13 Q. Okay. And so make sure I get my order right, so first  
14 you guys go and clear the house. Once the clearing is done,  
15 then the photography begins?

16 A. Yes.

17 Q. With respect to once all that had begun and the search  
18 is under way, what role did you undertake?

19 A. I was assigned a room, and I began to search with other  
20 agents.

21 Q. Okay. So I want to kind of fast-forward past all that.  
22 What I really want to ask you about is any interactions you  
23 had with Mr. Purbeck. So sounds like you didn't have any  
24 interactions with Mr. Purbeck during your initial entry. Is  
25 that right?

1 A. No.

2 Q. Okay. Did you see someone that either you knew to be  
3 Mr. Purbeck or later you learned to be Mr. Purbeck be  
4 brought through the house into the backyard?

5 A. I vaguely remember him being brought through the house  
6 into the backyard as I was, you know, walking around the  
7 house. I did see him. They did bring him through the house  
8 into the backyard.

9 Q. Okay. Did you -- do you know who brought him through  
10 the house?

11 A. I don't remember.

12 Q. FBI agents, though?

13 A. Yes.

14 Q. All right. Do you recall whether they had hands on him  
15 or they were just walking all the way through or did they  
16 have a hand on his back or how that was being handled?

17 A. They were walking by his side. They were -- he was just  
18 walking through the house. And I don't remember if it was  
19 one or two agents. I just remember somebody was with him,  
20 and they were just going from inside the house into the  
21 backyard.

22 Q. Okay. And then once they're in the backyard, did you  
23 see what happened?

24 A. No.

25 Q. All right. Did you have an occasion to look out the

1 back windows to see who might be out in the backyard?

2 A. No.

3 Q. All right. As far as you know, while you're doing the  
4 search in the house, you have no idea whether people are out  
5 there or not out there or what is going on?

6 A. That's correct.

7 Q. Okay. Got it. That was a long question.

8 A. That's okay.

9 Q. Okay. With respect to -- did you have an occasion then  
10 to go outside at some point and be with Mr. Purbeck outside  
11 in the backyard?

12 A. Yes.

13 Q. Okay. So I am going to use that -- stop right there.  
14 Let's back up a little bit. All right. So when you are  
15 saying you never saw Mr. Purbeck outside, is that from that  
16 point when you're in the house up until you went outside?

17 A. Yeah. The first time I saw him in the back is when I  
18 was asked to go outside. That is when I first laid eyes on  
19 him in the backyard physically.

20 Q. Okay. And if you were to -- or if you know, where -- at  
21 what point in the search process was that? Was it close to  
22 end or not?

23 A. No, we were -- we were close to being finished, yeah,  
24 from what I remember. We were about, I would say, maybe  
25 halfway to two-thirds through, because I remember we had

1 searched a couple of bedrooms, and some other agents had  
2 finished some other rooms. But we weren't -- we weren't  
3 complete. When I say complete with the search warrant,  
4 meaning that they are doing the exit photos or finalizing  
5 the paperwork, they're writing the log for the receipt of  
6 property for the things we've seized. That is what I mean  
7 when we say we're finished. So when I look at that, maybe  
8 60 percent it was -- you know, we were -- we had done a lot  
9 of the work, but we were close to being finished, yeah.

10 Q. During your time you were there, do you recall an Ada  
11 County Sheriff's detective and/or another Ada County  
12 employee coming through the house and coming out there?

13 A. While I was still searching?

14 Q. At any point while you were there on the premises.

15 A. Yes. Later.

16 Q. Okay. From your recollection, did the Ada County  
17 appearing, did that happen before or after you went outside  
18 and interacted with Mr. Purbeck?

19 A. After.

20 Q. You happened after or Ada County happened after?

21 A. I went outside first and had my interaction with the  
22 defendant, and then later they came out. But not while I  
23 was inside. I didn't see any Ada County detectives. While  
24 I was part of the search team, I did not see anybody come  
25 through the house from the Ada County Sheriff's Department.

1 Q. Okay. So tell us then, please, when you did go outside,  
2 what caused you to go outside and what -- well, what caused  
3 you to go outside?

4 A. I was completing the search of a room, and my  
5 supervisor, Doug Hart, came in and said we would like you to  
6 go out and sit with the defendant. A couple of detectives  
7 from Ada County, the Sheriff's office are going to come over  
8 here, will you just sit with him.

9 Q. Okay.

10 A. And I said yes.

11 Q. All right. Had you heard anything about Ada County up  
12 to that point?

13 A. I asked my -- I asked my supervisor why, and he  
14 mentioned some general -- made some general statement about  
15 there is some sort of link that he worked with the county,  
16 he made some statement, and the detectives want to interview  
17 him. I just asked him, you know, why do you want me to sit  
18 with him. He said, well, this is what's happening. I was  
19 like, okay.

20 Q. When you went outside, what did you see?

21 A. When I went outside, I saw -- I can't remember, but  
22 there was an agent or two with him. There was somebody with  
23 him. He was sitting down, and there was like three chairs  
24 set out on the back lawn. There was a -- as you went out  
25 the back door, there was like a covered porch and then there

1 was the lawn outside there, and the three chairs were on the  
2 lawn, not on the back porch.

3 Q. All right. Were the three chairs in the sun or the  
4 shade?

5 A. At the time I believe they were in the sun.

6 Q. Was Mr. Purbeck sitting in one of the chairs?

7 A. Yes.

8 Q. How were the chairs arranged?

9 A. They were arranged facing each other if you sat in them,  
10 or sort of like a -- kind of like a U shape. But if you sat  
11 in one of them, it wasn't like we would all be looking in  
12 one direction, we would have all been looking at each other.

13 Q. Okay. So -- okay. I got it.

14 A. So semicircle sort of thing.

15 Q. Okay. When you went out there, did you move Mr. Purbeck  
16 to the shade?

17 A. No, I just sat where the chairs were.

18 Q. Did he ask to move to the shade?

19 A. Not that I recall.

20 Q. Do you recall anything about you moving to the shade or  
21 him moving to the shade while you were out there?

22 A. No. We just -- I sat -- I can still remember clearly, I  
23 just sat down. He was in a chair where his back was facing  
24 the house, and I sat down in a chair that was sort of facing  
25 him. And he would have been right here and I was here, and

1 I could see the back door, and we were both just sitting in  
2 the sun.

3 Q. All right. What was the weather like?

4 A. I don't recall thinking to myself that it was overly hot  
5 at that point in the day. I would have remembered. I just  
6 remember -- I don't remember the heat being an issue at that  
7 point. I don't remember being really hot. I would have  
8 remembered, and I don't remember being too hot sitting  
9 there.

10 Q. How long were you outside with him?

11 A. I would say at least 45 minutes. At least. Maybe an  
12 hour.

13 Q. That entire time, was he still sitting in there in the  
14 same chair in the sun?

15 A. Yes.

16 Q. And you were as well?

17 A. Yes.

18 Q. Okay. Did he ever ask for any water?

19 A. No.

20 Q. Did you ever offer him any water?

21 A. No.

22 Q. Did you have any interaction with him whatsoever?

23 A. I did. We -- because you have to be really sensitive  
24 about the fact that I don't know anything about the case,  
25 and some people, I assumed -- I didn't see it, I

1       assumed someone had spoken to him, so I didn't want to talk  
2       about the case. So we just engaged in smalltalk. And it  
3       was pleasant, you know, we just kind of talked back and  
4       forth. Sometimes it would be a little quiet. We would just  
5       sit there. I didn't want to kind of force him to interact  
6       with me. But it was just -- we just sat there.

7       Q. How did he seem to you from the -- you know, just  
8       interaction standpoint?

9       A. He seemed -- because of the circumstances, he seemed  
10      concerned a little bit. You know, I think he was a little  
11      worried. But he seemed -- as much as he could have been, he  
12      seemed relaxed. I remember he was leaning back into his  
13      chair and his hands were on his thighs, you know, when I was  
14      speaking with him.

15     Q. Did you see a broken -- these were like plastic lawn  
16     chairs that you're talking about?

17     A. I don't remember what kind of chairs they were.

18     Q. Okay. Do you remember any broken chairs sitting and  
19     being outside?

20     A. No, I don't. No.

21     Q. That just means you don't recollect or you --

22     A. I don't recollect.

23     Q. Okay.

24     A. Yeah, I don't -- I don't recollect.

25     Q. Did he seem sunburned at all?

1 A. No.

2 Q. All right. Getting color in his face or anything?

3 A. Color, meaning red?

4 Q. Yeah, like sun, sun color, yeah.

5 A. I don't recall that. No.

6 Q. All right. How about sweaty?

7 A. I don't recall that.

8 Q. Did he have any kind of refreshments or liquids you saw  
9 when you were sitting out there?

10 A. Not that I can recall. No.

11 Q. After that interaction with him, at some point, it  
12 sounded like you went back inside?

13 A. Yes. I remember two Ada County detectives, officers  
14 showed up, and I -- they just said you can go in the house,  
15 and so I went in the house and just started to finish. They  
16 were finishing up by that point.

17 Q. Okay.

18 A. I remember there were more -- walking through the house,  
19 and there were more people kind of on the front lawn. And  
20 they were starting to kind of -- they were starting to --  
21 they were starting to search through his car, and they were  
22 also categorizing some of the different things that they  
23 were going to seize.

24 Q. All right. Looking back on it, how long from when you  
25 went back inside and stopped interacting with Mr. Purbeck

1 till you actually left the scene?

2 A. I can't -- I can't recall exactly. It didn't seem like  
3 it was more than an hour. Maybe. It wasn't -- they were  
4 finishing up. And, you know, that part, when you do a  
5 search warrant, slows down, because after the exit photos,  
6 you have to make sure the paperwork is done properly. But I  
7 don't recall us being there more than an hour, hour and a  
8 half at that point, after I left him in the backyard.

9 Q. Okay. At any point that you saw him in the backyard --  
10 well, let me ask you, was the only point that you saw him in  
11 the backyard was when you were sitting out there with him?

12 A. Yes.

13 Q. All right. After you came back inside, did you have any  
14 further interactions with Mr. Purbeck?

15 A. No.

16 Q. Did you see him, whether up close or through the window  
17 or in any other way?

18 A. I don't recall.

19 Q. Okay. All right.

20 MR. HALL: If I can have one second, Judge.

21 THE COURT: Yes, sir.

22 BY MR. HALL:

23 Q. Were you there from the -- sounds like you were there at  
24 the beginning. Were you there through the very end, when  
25 everything got wrapped up and left?

1 A. As they were wrapping up. What happens usually in those  
2 situations, people who have things, they're going to take  
3 custody of those things and move them back to the office.  
4 They -- you know, they start releasing people. But I was  
5 there -- from what I recall, I was there until the end.

6 Q. Okay. And from your knowledge, Mr. Purbeck was there  
7 that entire time?

8 A. Yeah. I don't know where -- if he was went somewhere  
9 else after the backyard, I don't know where --

10 Q. I'm not saying he did. I'm just asking.

11 A. No, no, I know. I'm just saying --

12 Q. That's what I mean.

13 A. Yeah, I -- I don't know about his -- after I left him, I  
14 don't know if he stayed in the backyard or if he went  
15 somewhere else.

16 Q. Okay. Remind me again how long you've been in law  
17 enforcement?

18 A. A little over 16 years.

19 Q. Okay. And the whole time with the FBI?

20 A. Correct.

21 Q. Okay. So from watching Mr. Purbeck when you were out  
22 there with him, did you have a sense as to whether he was  
23 being detained, not detained, was he free to leave? What  
24 was your impression as a law enforcement officer?

25 MR. HERSKOWITZ: I'm going to object to the extent

1       that it calls for a legal conclusion. Just my objection,  
2       Your Honor.

3                   THE COURT: Sustained.

4       BY MR. HALL:

5       Q. Why did you go outside to sit with Mr. Purbeck?

6       A. Really for two reasons. I was never told that he was in  
7       custody or anything like that or he is being detained at the  
8       time. When that usually happens, at this point in my  
9       career, at least physical search warrants of houses,  
10      probably at least three dozen, you know, at this point, and  
11      one of the things that we have to be aware of when -- your  
12      subjects can either stay but they can't interfere with the  
13      search, or they're allowed to leave if they're not in  
14      custody. If they are going to stay, we usually have  
15      somebody stay with them so that, A, you preserve the  
16      integrity of the scene. You can't have a defendant walking  
17      through the search scene while it is being done. And  
18      second, for their protection and the agents in case  
19      something happens. So they usually assign an agent to sit  
20      with someone if they choose to sit at the scene.

21      Q. All right. When you were asked to go out there and sit  
22      with him, did anyone express to him that he was being  
23      detained or not being detained or he was free to leave or  
24      not free to leave?

25      A. Nobody said that in front of me.

1 Q. Okay. Did Mr. -- did you ever say anything to  
2 Mr. Purbeck along the lines of that you're welcome to leave  
3 or you need to stay here or anything to that effect?

4 A. No, I never told him that.

5 Q. All right. Did Mr. Purbeck stand up or seek to stretch,  
6 move, move his chair, go inside, go outside, anything along  
7 those lines?

8 A. No, not that I recall.

9 Q. He just sat there the entire time?

10 A. Uh-huh (affirmative).

11 MR. HALL: That is all the questions I have,  
12 Judge.

13 THE COURT: Any cross?

14 MR. HERSKOWITZ: Very briefly.

15 Cross-examination

16 BY MR. HERSKOWITZ:

17 Q. Good afternoon, Special Agent Heap. You testified  
18 before about guns being drawn when you were clearing the  
19 house. Is that correct?

20 A. Correct.

21 Q. That was inside the house; correct?

22 A. Yes, inside the house.

23 Q. Okay. Were any guns pointed at Mr. Purbeck in your  
24 presence?

25 A. No. Not that I recall.

1 Q. Is it true, the reason for unholstering your gun when  
2 clearing a house inside is for agent safety. Isn't that  
3 correct?

4 A. Correct.

5 Q. Agents could encounter someone with a gun or a weapon.  
6 Isn't that correct?

7 A. Correct.

8 Q. But sitting here, you cannot or you have no recollection  
9 of anyone pointing or unholstering a gun in the presence of  
10 Mr. Purbeck who was outside. Isn't that correct?

11 A. I don't recall anyone ever pointing a weapon at  
12 Mr. Purbeck.

13 Q. Okay. Thank you, sir.

14 THE COURT: Redirect?

15 MR. HALL: Briefly.

16 Redirect Examination

17 BY MR. HALL:

18 Q. Am I right that when the guns were unholstered by the  
19 entry team, you had them unholstered and held at your ready  
20 position prior to entering the home; correct?

21 A. Correct.

22 Q. So please tell us whether or not, as you approached the  
23 house, were your guns out as you kind of came out into the  
24 yard and went into the house?

25 A. Yeah. When we came up to the door, it's a -- it's a

1 term that we use as far as tactics, it's called stacking on  
2 the door where we all line up. That's when everybody pulled  
3 out their guns. And we got up to the walkway before the  
4 house, and everyone started pulling their guns out and  
5 getting them at the ready.

6 Q. Let me show you what has already been introduced as  
7 Defendant's Exhibit 16. Do you recognize that home?

8 A. I do.

9 Q. All right. So you may be able to tap that screen  
10 actually. When you say that you -- that the team lined up  
11 and started stacking when you reached the walkway, can you  
12 identify the point in which you're referring to,  
13 approximately?

14 A. Yes. I believe -- can I touch the screen?

15 Q. Yeah, I believe so.

16 A. Right here. This right here is where -- what I  
17 recollect where the team was stacking up. And I believe  
18 that Agent Doug Hart, what I recall, he was knocking and  
19 announcing at the door right there.

20 Q. All right. And that's when the guns were drawn, or the  
21 guns were drawn prior to that and that's when you guys lined  
22 up to get going?

23 A. It would -- it would be safe to say as we were coming up  
24 on the walkway here, we would have been pulling our guns out  
25 at that point.

1 Q. Okay.

2 A. And even coming up the driveway, we would have started  
3 getting ready.

4 Q. Say that last part again.

5 A. Coming up the driveway here, converging to where we  
6 stacked up, people would have been pulling out their guns  
7 and getting them at the ready at that point.

8 Q. Okay. And is that the point where Agent O'Neil peeled  
9 off?

10 A. What I remember, I was -- I know that Agent O'Neil --  
11 from what I recall, I think someone said something that they  
12 saw the defendant in the driveway, and that's why we started  
13 to approach. Agent O'Neil approached him. And because  
14 Agent O'Neil was dealing with whoever was in the driveway  
15 and I was assigned to be on the entry team, I focused solely  
16 on, you know, getting lined up and getting in position.

17 Q. Let me show you a different photo that may -- I will  
18 show you what is introduced as Government's Exhibit 1. Is  
19 that a kind of more pulled-back view of the same home?

20 A. Yes.

21 Q. All right. So show us again kind of the interactions as  
22 you and the other FBI agents pulled your guns and approached  
23 the house.

24 A. I would say we came, we converged on this spot right  
25 here at the beginning of the walkway, because people were

1 parked in different places, so we are all converging. And  
2 all I remember is -- I don't remember the exact spot, but it  
3 was somewhere in the driveway where Agent O'Neil encountered  
4 Mr. Purbeck -- who I learned later was him. I didn't know  
5 who it was at the time.

6 Q. Understood. Okay.

7 MR. HALL: No more questions, Judge.

8 THE COURT: All right. May Agent Heap be excused?

9 MR. HALL: Yes.

10 THE COURT: Agent Heap, you are excused, sir.

11 THE WITNESS: Thank you, Your Honor.

12 MR. HALL: So, Judge, our next witness is  
13 Detective Ryan Pacheco. If we could have a brief break,  
14 we're going to Zoom him in, and I just need to connect with  
15 him and tell him that is what is happening.

16 THE COURT: Anything else, Mr. Herskowitz?

17 MR. HERSKOWITZ: Oh, no.

18 THE COURT: Okay. We will take a recess while the  
19 Zoom is set up.

20 (Break until 4:15 p.m.)

21 THE COURT: Mr. Hall?

22 MR. HALL: Yes, sir.

23 THE COURT: Call your witness and let our clerk do  
24 the swearing in.

25 MR. HALL: All right. I call Detective Ryan

1 Pacheco.

2 Detective Ryan Pacheco

3 Sworn

4 THE CLERK: Please state your name for the record.

5 THE WITNESS: Ryan Pacheco.

6 Direct Examination

7 BY MR. HALL:

8 Q. Where are you employed?

9 A. I work for the Ada County Sheriff's office in Boise,  
10 Idaho.

11 Q. How long have you worked there?

12 A. About 17 years.

13 Q. How long you been in law enforcement?

14 A. Almost 20.

15 Q. You were working for the Ada County Sheriff's Department  
16 on August 21, 2019?

17 A. I was.

18 Q. All right. Did you have occasion to go out to the  
19 residence of Robert Purbeck on August 21, 2019?

20 A. I did.

21 Q. All right. Please tell us what prompted you to go out  
22 to the residence.

23 A. I was called to a meeting with the Sheriff who informed  
24 me that the FBI was out at a residence of an employee who  
25 worked for the county, who at one point had been housed out

1 of the Ada County Sheriff's Office, and the Sheriff wanted  
2 me to go to the residence and not get involved in their  
3 case, but to see if there was any exposure that we needed to  
4 be aware of from the county side.

5 Q. Did you go by yourself or with someone else?

6 A. I went with Steve O'Meara.

7 Q. Who is he?

8 A. He is the -- I don't know his exact title, but he  
9 oversees our IT department for the county.

10 Q. Did you drive out there together or arrive separately?

11 A. We took separate vehicles.

12 Q. At the same time you arrived approximately?

13 A. Yes.

14 Q. Please tell the Court, once you arrived, what did you  
15 see outside when you first pulled up?

16 A. There was a lot of vehicles in front. Took me a little  
17 bit to find some parking, but there was FBI agents coming in  
18 and out of the house. A lot of activity, I guess I would  
19 say.

20 Q. The FBI agents who were coming in and out of the house,  
21 did you observe what they were doing?

22 A. Looked like they were gathering things, collecting  
23 evidence.

24 Q. Where did you go then?

25 A. Went -- I was escorted through the front door. We went

1 through -- I think it was a living room area. Went through  
2 the kitchen or dining room area and then out to the backyard  
3 through the back door.

4 Q. All right. When you went through the house, what did  
5 you see inside the house with respect --

6 A. More of the same --

7 Q. I'm sorry. With respect to the agents, what did you see  
8 with respect to law enforcement agents inside the house?

9 A. It was a very brief walk. I didn't pay a whole lot of  
10 attention, but it was more of the same. They appeared to be  
11 conducting -- well, I knew they were conducting a warrant,  
12 collecting evidence.

13 Q. Did you see -- do you know who Sarah Ganger is?

14 A. No.

15 Q. All right. Did you see someone who appeared to not be  
16 involved in the law enforcement search process in the house  
17 when you went through?

18 A. Not that I recall.

19 Q. How -- did someone escort you through the house, or did  
20 you find your own way?

21 A. No, I was escorted.

22 Q. Do you know by whom?

23 A. I believe it was the local FBI agent. I could refresh  
24 with my notes if you want. Maybe Mr. Hart?

25 Q. It's fine. So once you arrived, did you and Mr. O'Meara

1 go into the backyard?

2 A. We did.

3 Q. Once you stepped out, describe for the Court what you  
4 saw.

5 A. There were some more agents out in the backyard.

6 Mr. Purbeck was sitting in a lawn chair out there a ways  
7 from the house towards the back of the yard.

8 Q. Was he in the sun or in the shade?

9 A. I think he was in the sun. But I don't recall exactly  
10 where we were sitting. But I don't remember us being under  
11 a shaded area.

12 Q. Were there other law enforcement -- other than yourself  
13 and Mr. O'Meara, were there other law enforcement agents in  
14 the backyard?

15 A. Yes.

16 Q. Do you remember approximately how many?

17 A. I don't.

18 Q. Okay. With relation to where Mr. Purbeck was sitting,  
19 did you see where the other agents were located?

20 A. I just recall there being agents out in the backyard. I  
21 don't recall any being directly around him. But not --  
22 within a decent amount of proximity. We were all in the  
23 backyard. It isn't a huge backyard. But I can't recall  
24 somebody standing right next to him.

25 Q. Okay. When you walked out there, tell the Court, what

1 did you do?

2 A. So Mr. O'Meara and I had a couple of seats, and we sat  
3 down and had a conversation with Mr. Purbeck.

4 Q. And at that time, did you advise him of Miranda rights?

5 A. I did.

6 Q. All right. Why?

7 A. I was told by the Sheriff that we were not going to get  
8 involved in a local case, that this was the FBI's show, but  
9 there were concerns about some of our -- whether or not we  
10 had any exposure. I didn't know what he was going to tell  
11 us, so I made a judgment call. Because it was unknown, I  
12 went ahead and read him his rights just in case there was  
13 something that was unexpected that was said.

14 Q. Did you believe him to be in custody at the time?

15 MR. MUND: Objection, Your Honor. That calls for  
16 a legal conclusion.

17 MR. HALL: It goes to why he read him Miranda  
18 rights and his impression of. How he's behaving. That's  
19 what I'm tendering him for.

20 THE COURT: I'll overrule the objection.

21 BY MR. HALL:

22 Q. Did you believe him to be in custody at the time?

23 A. No.

24 Q. Okay. What did you understand or what did you believe  
25 his status to be?

1 A. Well, he wasn't in handcuffs. But the way I -- the way  
2 it perceived to me was that -- which is typical when you  
3 serve a search warrant. We have the people either step out  
4 front or step out back. So, you know, it was my impression  
5 that he was away from the action that was going on in the  
6 house. But I didn't -- he wasn't handcuffed.

7 Q. Okay. If he was not in custody, why did you decide  
8 reading him his Miranda rights was the appropriate choice?

9 A. Again, because again, as far as -- from my conversation,  
10 I didn't know what he was going to tell me as far as why I  
11 was there.

12 Q. Do you have an understanding as to whether county  
13 employees are obligated to cooperate with investigations by  
14 the county?

15 A. I work for the Sheriff's office. I can't speak to what  
16 the county employee manual might say.

17 Q. Fair enough. With respect to -- what time of the day  
18 did you get out there, approximately?

19 A. It was late morning. I don't -- I don't recall the  
20 exact time, but it was before lunch.

21 Q. Okay. And how long were you out there?

22 A. I would estimate somewhere around 45 minutes, half hour  
23 to an hour, somewhere in between there. It wasn't a real  
24 long interview.

25 Q. Where did you sit?

1 A. I sat in a chair in the backyard.

2 Q. Where did Mr. O'Meara sit?

3 A. He sat in front of me. My back was -- my back was to  
4 the house facing Mr. Purbeck who was facing the house area.

5 Q. With respect to -- were there other FBI agents who --  
6 let me back up. So you were sitting down, Mr. O'Meara was  
7 sitting down, and Mr. Purbeck was sitting down, and you and  
8 Mr. O'Meara were facing Mr. Purbeck. Did I get my  
9 orientation correct?

10 A. That's correct.

11 Q. Okay. And were there chairs already near Mr. Purbeck  
12 that you sat near, or did you have to go get them and bring  
13 them over to talk to him?

14 A. I don't remember if they were already set up for us. I  
15 didn't -- I didn't grab a chair myself. I don't -- I don't  
16 recall somebody bringing us chairs. To my best  
17 recollection, they might have already been sitting there. I  
18 don't remember for sure.

19 Q. Okay. And how close were the chairs -- or how close  
20 were you to Mr. Purbeck?

21 A. Six feet maybe. We were pretty close.

22 Q. All right. Were the chairs arranged like in a circle, a  
23 semicircle, a triangle? How would you describe the kind of  
24 orientation of the chairs?

25 A. Mr. Purbeck was sitting in front of us in one chair.

1 His back was towards the back end of the backyard. We were  
2 sitting in front of our two chairs -- Mr. O'Meara and myself  
3 were sitting in front of Mr. Purbeck with our backs towards  
4 the house.

5 Q. Did you record your interview with Mr. Purbeck?

6 A. I did.

7 Q. What happened to the recording?

8 A. So that recording was on a handheld digital recorder.  
9 It is a recorder that I used when I wrote my report. I  
10 don't know if you want to know the background of how I use  
11 that. But sometime later when I had recorded another  
12 interview on a criminal case, I had found out that that  
13 recorder was recording in an MP4 format and when I went to  
14 try to download it into our report-writing system, it  
15 requires an MP3 format. And when I changed the settings on  
16 the recorder, I lost all of the MP4 recordings that were on  
17 that recorder.

18 Q. Does that include the recorded interview of Mr. Purbeck?

19 A. Yes.

20 Q. Did you attempt to recover the recording of Mr. Purbeck?

21 A. I called our IT person here who said it wouldn't be  
22 possible.

23 Q. What is that person's name?

24 A. Cody Storms.

25 Q. With respect to turning on the recorder, did you do it

1 when you first arrived?

2 A. I don't remember exactly when I started recording.

3 Q. Would the Miranda rights that you read have been on the  
4 recording that you made?

5 A. Yes. They were. I noted that.

6 Q. With respect to sitting there, you and Mr. O'Meara  
7 sitting there and Mr. Purbeck was facing you, were there  
8 other FBI agents observing your interview with Mr. Purbeck?

9 A. I don't remember seeing that. They weren't standing in  
10 my field of view, so I didn't see them. What was happening  
11 behind me, I don't know.

12 Q. All right. When you ended the interview and stood up,  
13 were there FBI agents still outside? I mean outside in the  
14 backyard with you and Mr. O'Meara.

15 A. There were still agents out back, yes.

16 Q. Okay.

17 A. In the backyard.

18 Q. And where were they at the time you stood up, roughly,  
19 in relation to where you and Mr. O'Meara and Mr. Purbeck  
20 were seated?

21 A. I don't recall exactly.

22 Q. Do you have a sense, were they way across the yard, or  
23 were they kind of generally within the same area as you and  
24 Mr. Purbeck?

25 A. Yeah, I'm not sure. I know there were guys around. How

1 close they were to us, I don't remember.

2 Q. All right. Other than interacting with Agent Hart or  
3 whomever the agent was that escorted you through the home  
4 initially, did you talk with any of the other agents outside  
5 in the backyard?

6 A. No.

7 Q. Okay. When you observed Mr. Purbeck, did he seem  
8 sunburned, not sunburned? How did his skin appearance  
9 appear, if you recall?

10 A. Yeah, I didn't notice anything that struck me that, you  
11 know, he was having a health issue or something like that,  
12 if that's what you're asking.

13 Q. Not so much a health issue. I'm just asking if he's  
14 seated outside in the sun, I'm trying to get a sense of did  
15 you observe any kind of coloring from the sun, or maybe  
16 not -- sunburned is the wrong word, but any kind of sun  
17 exposure?

18 A. Oh, no, not that I remember.

19 Q. Do you remember Mr. --

20 A. We were both kind of sitting in the same area.

21 Q. I'm sorry. I interrupted you. I'm sorry. Keep going.

22 A. We were both kind of sitting in the same area, so I -- I  
23 didn't get a sunburn.

24 Q. Okay. Am I right that your back was to the sun,  
25 Mr. Purbeck's face was to the sun?

1 A. I don't recall that, which -- who was facing the sun.

2 Q. Do you recall Mr. Purbeck having any refreshments or  
3 liquids with him while you were interviewing him?

4 A. I don't recall seeing that.

5 Q. Did that come up, whether you offered some or asked for  
6 some for him or vice versa?

7 A. No. Not that I remember.

8 Q. All right. And when you were speaking to Mr. Purbeck,  
9 how did he seem when you were talking to him? Did he seem  
10 to be able to respond and speak to you or not?

11 A. Yeah. I thought we had a good conversation. It was  
12 pleasant. There was no attitude or there was no heavy back  
13 and forth or anything like that. He was very pleasant to  
14 speak with.

15 Q. All right. Once you completed speaking to Mr. Purbeck,  
16 what did you do next?

17 A. I left.

18 Q. All right. With Mr. O'Meara?

19 A. Well, we came in separate cars, but yes, we both exited  
20 at the same time.

21 Q. That's me being inartful with my question. Did you and  
22 Mr. O'Meara leave the residence at the same time?

23 A. Yes.

24 Q. Leave the interior -- the backyard at around the same  
25 time and go out to your respective vehicles?

1 A. Correct.

2 Q. Got it.

3 A. Yes.

4 Q. All right. And other than what you just described to  
5 the Court, did you have any other interactions with  
6 Mr. Purbeck on August 21, 2019?

7 A. After I left?

8 Q. Yes.

9 A. No.

10 Q. All right. And when you left, as you stood up to walk  
11 away, where was Mr. Purbeck?

12 A. He was still seated in the chair --

13 Q. All right. And -- sorry, I interrupted you again.

14 A. In the backyard.

15 Q. Is that the last place that you saw him on that day?

16 A. Yes.

17 Q. So you left, and he was still seated out there in the  
18 same chair that you saw when you first arrived?

19 A. Yes.

20 MR. MUND: Objection, Your Honor. That's a  
21 leading question.

22 MR. HALL: All right. I'll rephrase it.

23 THE COURT: Overruled. Proceed on.

24 MR. HALL: Okay.

25 BY MR. HALL:

1 Q. All right. So when you -- let me re-ask the question.  
2 So when you left, Mr. Purbeck was still seated in the same  
3 chair in the backyard as what you found him in when you  
4 first arrived, whatever it was, you said 45 minutes earlier?

5 A. Yes.

6 Q. All right.

7 MR. HALL: One second, Your Honor.

8 That is all the questions I have for right now.

9 THE COURT: Any cross-examination?

10 MR. MUND: No cross-examination, Your Honor.

11 Thank you.

12 THE COURT: All right. Detective Pacheco, you are  
13 excused, sir. Thank you.

14 MR. HALL: Thank you, Detective. Appreciate your  
15 time.

16 THE WITNESS: Thank you.

17 THE COURT: All right. It is 4:30. Mr. Hall, do  
18 you want to put another witness on if we can get him  
19 completed it in the next half hour?

20 MR. HALL: I don't think I'm going to be able to  
21 pull that off, Your Honor. I think my next witness will run  
22 longer than a half hour any way we slice it and dice it. So  
23 my apologies to the Court.

24 THE COURT: All right. We will plan to resume  
25 tomorrow morning at 9:30 then. Does the government

1 anticipate having any rebuttal witnesses at this time?

2 MR. HERSKOWITZ: Not at this time, Your Honor, but  
3 that may change after tomorrow.

4 THE COURT: Sure. Okay. And how long tomorrow  
5 witnesses do you think the witnesses are going to take if we  
6 get started at 9:30?

7 MR. HALL: I would expect to be done by noon with  
8 the caveat being, Judge, that if Mr. Purbeck chooses to  
9 testify, that may change the dynamic of how long things  
10 take, because that would depend both on cross -- it needs to  
11 be both on direct as well as cross. I think that's the --  
12 that's what might run us over. In any event, I don't think  
13 we would go way past that. I mean, we're going to get in  
14 and get out. The first witness will take us a little longer  
15 than a half hour, so 9:30, about 10:15, maybe 10:30.  
16 Depending on the amount of cross that takes place, 11:30,  
17 12:30, I think --

18 THE COURT: That's Ms. Ganger?

19 MR. HALL: Ms. Ganger, yeah. I think Ms. Ganger  
20 is going to take 45 minutes to 60 minutes, just ballpark  
21 figure, which is why I say we can't do her today. And then  
22 if Mr. Purbeck does testify, I think that will expand the  
23 time. If he does not testify, then we go straight to  
24 Dr. Allen, and I think Dr. Allen will be pretty short and  
25 sweet and to the point. So I think -- I understand that's

1 not what the Court asked me, I'm just doing the best to give  
2 you a sense if there is an unknown component here.

3 THE COURT: Sure.

4 MR. HALL: But anticipating that Mr. Purbeck very  
5 likely may testify, I think we will run over into early  
6 afternoon.

7 THE COURT: All right. That will be helpful. All  
8 right. Thank you, Mr. Hall.

9 MR. HALL: Yes, sir.

10 THE COURT: Mr. Herskowitz, anything else for the  
11 government this evening?

12 MR. HERSKOWITZ: No, Your Honor. Thank you.

13 THE COURT: All right. Very good. We'll see you  
14 all tomorrow morning at 9:30. Court is adjourned for today.

15 (Hearing adjourns at 4:35 p.m.)

16 \* \* \* \* \*

17 REPORTER'S CERTIFICATION

18 I certify that the foregoing is a correct transcript  
19 from the record of proceedings in the above-entitled matter.

20  
21 s/Lori Burgess

22 Lori Burgess

23 Official Court Reporter

United States District Court

Northern District of Georgia

24 Date: January 3, 2023  
25